149 U.S. 1

RECORD, CASE No. 13,737.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 153.

R. C. CATES, L. L. CATES, AND D. ANDREWS, INDIVIDUALLY AND AS COMPOSING THE FIRMS OF LUKE CATES & CO. AND ANDREWS, CATES & CO.; R. C. CATES AND D. ANDREWS, AS CATES & ANDREWS; J. K. HERMAN, F. G. SMITH, AND THE TISHOMINGO SAVINGS INSTITUTION, APPELLANTS,

vs.

J. H. ALLEN, T. W. WEST, AND J. C. BUSH, PARTNERS UNDER THE FIRM NAME OF ALLEN, WEST & BUSH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 12, 1889.

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1 UNITED STATES OF AMERICA,
Eastern Division of the Northern District of Mississippi.

District Court. In Chancery.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } No. 41.

Be it remembered that at a term of the district court of the United States for the district and division aforesaid, begun and held at the court-house thereof, in the town of Aberdeen, in said district and division, on the 1st Monday of April, A. D. 1887—present, the Honorable Robert A. Hill, judge and chancellor, presiding—the following proceedings were had on the equity side of said court in the cause named above, to wit:

On the 8th day of December, 1886, the complainants filed in the chancery court of Lee county, in the State of Mississippi, their bill of complaint in the words and figures following, to wit:

2 THE STATE OF MISSISSIPPI,
Lee County.

Chancery Court, May Term, 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.*

J. H. ALLEN, a Resident Citizen of the City of New Orleans, in the State of Louisiana; T. H. West, a Resident Citizen of the City of St. Louis, in the State of Missouri, and J. C. Bush, a Resident Citizen of the City of Mobile, in the State of Alabama, under the Firm —, Complainants,

vs.

R. C. CATES, a Resident Citizen of Alcorn County, in the State of Mississippi; D. Andrews, a Resident Citizen of Lee County, State of Mississippi; Luke L. Cates, a Resident Citizen of Lee County, in said State of Mississippi; J. K. Herman, a Resident Citizen of Alcorn County, State of Mississippi, and F. G. Smith, a Resident Citizen of Alcorn, State of Mississippi, Defendants.

To the honorable chancery court of Lee county:

Humbly complaining, your complainants would respectfully represent and show unto the court as follows, to wit:

That your complainants are now and have been for some years past engaged in a general commission business and as cotton
3 factors in the city of New Orleans under the firm name and style of Allen, West & Bush; that the said R. C. Cates, D. Andrews, and Luke L. Cates have been engaged in the general mercantile business in the town of Tupelo, under the firm name and

style of Luke Cates & Co., up to the — day of ——, 1886, when the style of said firm was changed to Andrews, Cates & Co., but the two firms of Andrews, Cates & Co. and Luke Cates & Co. were composed of the same individuals; that during the general course of business and trade the said defendants became indebted to complainants in the sum of about sixteen thousand dollars ($16,000.00) on open account, most of which was for money advanced by complainants to defendants to enable them to carry on business a- merchants, and was so advanced during the years 1884, 1885, and 1886. An itemized statement of said account is herewith filed, marked Exhibit "A," and prayed to be taken and considered a part of this bill; that the debt due from said defendants to complainants has long since been due, and, although often requested so to do, said defendants have wholly neglected and refused to pay to complainants said sum of money or any part thereof and still neglect and refuse to pay the same; that on or about the 1st day of December, 1886, the said defendants, D. Andrews, R. C. Cates, and L. L. Cates, being largely indebted to divers persons in divers sums, made or attempted to make a fraudulent, covinous, and collusive transfer and assignment of all their property, both real and personal, except such as
4 was exempt from seizure or sale under executions and attachments to the said J. K. Herman and F. G. Smith. By said fraudulent and pretended transfer said D. Andrews, R. C. Cates, and Luke L. Cates attempted to transfer, set over, convey, assign, and realize all of their effects to said J. K. Herman & F. G. Smith, including the real estate belonging to the firm of Andrews, Cates & Co., to each individual member of said firm, and to Cates & Andrews, a mercantile firm at Kossuth, in Alcorn county, wherein the said R. C. Cates and D. Andrews were partners. Complain- *to* charge and aver that said pretended transfer and assignment is fraudulent in law and null and void as to complainants and other creditors of D. Andrews, R. C. Cates, & L. L. Cates; and complainants further charge and aver that said pretended transfer and assignment is fraudulent in fact, and is void as to complainants and other creditors of the grantors therein; that said pretended transfer and assignment was made without any valuable consideration, and was made with the covinous, collusive, and fraudulent intent of delaying, hindering, and defrauding complainants and other creditors of said grantors of the collection of their debts, suits, actions, accounts, claims, notes, and demands, and, if permitted to stand, said transfer will delay, hinder, and defraud complainants and other creditors of the collection of their just suits, actions, notes, accounts, claims, and demands against the said defendants, D. Andrews, R. C. Cates, & L. L. Cates. A copy of said transfer and assignments is herewith filed,
5 marked Exhibit "B," and prayed to be taken and considered a part of this bill. By virtue of the said pretended transfer and assignment the said F. G. Smith and J. K. Herman are claiming title to and possession of the following real estate, to wit: One brick storehouse in the town of Tupelo, known as the Murphy storehouse, and more particularly described in a deed from J. M. Allen to L. L. Cates, D. Andrews, and R. C. Coates, now on record

in the chancery clerk's office of Lee county, to which reference is here made; fifty-three & ⅓ acres on south side of N. E. ¼ of sec. 14, T. 10, R. 7 east, and fifty-three & ⅓ acres off of south side of S. E. ¼ of sec. 14, T 10, R. 7 east, both in Itawamba county, Miss.; and the following-described lands in Alcorn county, to wit: S. E. ¼ of sec. 10, T. 2, R. 5; S. E. ¼ of sec. 19, T. 2, R. 6; S. W. ¼ of sec. 31, T. 2, R. 7; E. ½ of N. W. ¼ of sec. 31, T. 2, R. 7; N. E. ¼ of S. E. ¼ of sec. 2, T. 3, R. 5; E. ¼ of S. E. ¼ of sec. 3, T. 3, R. 6; one storehouse and lot fronting 44 feet on the street running east & west in the town of Kossuth, running north 100 feet, west 44 feet, south to the street, 100 feet, in which Coates & Andrews lately conducted a mercantile business in the town of Kossuth, being in the S. W. ¼ of sec. 26, T. 2, R. 6; N. E. ¼ sec. 6, T. 3, R. 6; an undivided half interest in the W. ¼ of sec. 36, T. 2, R. 5; and an undivided half interest in two acres in the town of Kossuth, in the S. W. ¼ of sec. 26, T. 2, R. 6, known as the old foundry lot, in said town; and the following land in Tippah county, to wit: One hundred and seventy acres (170 a.), fully described in a deed from W. M. Pittman and Jack Pitt-
6 man to R. C. Cates & D. Andrews, now on record in the chancery clerk's office of said county of Tippah, to which reference is made; that said F. G. Smith & J. K. Herman only claim title through said fraudulent and void deed of assignment, and that their title to all of said property is fraudulent and void as against complainants and other creditors of said grantors in said assignment, and that in truth and in fact the title to all of said property remains in the said defendants, R. C. Cates, D. Andrews, and L. L. Cates, and is liable to be subjected to the payment of complainants' demands and the other debts of said R. C. Cates, D. Andrews, and L. L. Cates, and that said land was conveyed to the said F. G. Smith and J. K. Herman for the purpose of delaying, hindering, and defrauding complainants and other creditors of the collection of suits, actions, accounts, notes, claims, and demands, and does delay, hinder, and defraud complainants and other creditors, and ought to be set aside and declared null and void and said property subjected to the payment of complainants' demands; and complainants further charge that by virtue of said fraudulent assignment and transfer from said R. C. Cates, L. L. Cates, & D. Andrews the said F. G. Smith and J. K. Herman are in possession of and claim a large stock of goods, wares, and merchandise in the brick storehouse in the town of Tupelo, in Lee county, Mississippi, in which Andrews, Cates & Co. lately did business, on the corner of Maine street and Broadway; that said stock of goods, wares, and merchandise is reasonably worth about ($10,000.00) ten thousand dollars, and is now
7 in the possession of the said F. G. Smith, who, your complainants are informed and believe and so charge the fact to be, is insolvent and has no property above his legal exemptions, and complainants charge that if said F. G. Smith is suffered to remain in possession and control of said goods, wares, and merchandise that there is danger that the same will be lost to complainants and the other creditors of said R. C. Cates, L. L. Cates, & D. Andrews, and that irreparable injury will result to your complainants;

and complainants further charge that the claim of the said F. G. Smith to the said stock of goods, wares, and merchandise is fraudulent, null, and void; is made with intent to delay, hinder, and defraud complainants and other creditors of R. C. Cates, D. Andrews, & L. L. Cates; that also by virtue of said fraudulent assignment and transfer the said F. G. Smith has taken charge of the books, notes, accounts, and claims of Andrews, Cates & Co. to the amount of about $10,000.00 and is proceeding to collect the same, whereby irreparable injury may result to complainants and other creditors of said firm; that all the notes, books of accounts, money, and choses in action and other evidences of debt of the said Andrews, Cates & Co. is now in the possession of the said F. G. Smith, claiming under said fraudulent transfer, and ought to be subjected to complainants' demands and the demands of other creditors of said firm; that some of these notes and accounts are very large, and complainant- specially prays that the accounts due said firm

8 by Jack Mann and J. L. Finley be subjected to the payment of complainants' demands, and that all other accounts and notes due said firm be subjected to the payment of complainants' demands, and then to the demands of other creditors that may choose to come and join in this bill. Complainants further charge that said J. K. Herman is now in possession of a stock of goods, wares, and merchandise in the town of Kossuth, in Alcorn county, in said State, in the storehouse where Cates and Andrews late- did business, of the value of about $5,000.00, which he is holding and claiming under and by virtue of said fraudulent deed of assignment, and also notes, accounts, and claims to the amount of about $5,000.00, all of which is in truth and in fact the property and effects of the said D. Andrews and R. C. Cates, and ought to be subjected to complainants' demands and the demands of other creditors of said Andrews, Cates & Co., R. C. Cates, D. Andrews, & L. L. Cates.

Wherefore, in consideration of the premises, your complainants pray that said defendants, R. C. Cates, D. Andrews, L. L. Cates, F. G. Smith, and J. K. Herman, be made parties defendants to this bill of complaint, and that citation be issued to the proper counties, returnable on the 1st Monday in May, 1887, to the next term of this honorable court, requesting each of said defendants to appear at said time and answer the allegations of this bill under oath and to abide the judgement of the court in the premises

9 And your complainants further pray that on a final hearing your honor will grant a decree declaring fraudulent, void, and inoperative the deed of assignment made and executed by the said R. C. Cates, D. Andrews, and L. L. Cates to F. G. Smith and J. K. Herman, and that your honor will subject all of the property covered by said assignment and transfer to the payment of their debts from the date of the filing of this bill, and that your honor will set aside the transfer and assignment and conveyance of all the lands hereinbefore described and declare the same null and void and of none effect and subject said lands to the payment of complainants' demand first and, if there be a residue thereafter, then to the payment of such other demands as may be properly before your honor,

and that your honor issue at once a restraining order restraining and enjoining the said F. G. Smith and J. K. Herman from proceeding to collect the debts due to the grantors in the deed of assignment and from disposing of the goods, wares, and merchandise now in their possession belonging to said grantors or either or any of them, and that a writ of sequestration issue at once to the sheriff of Lee county commanding him to seize and take into his possession the goods, wares, and merchandise in the brick storehouse in Tupelo, in Lee county, in which Andrews, Cates & Co. lately did business, being on the corner of Broadway and Maine street and known as the Murphy brick storehouse, and to deal therewith according to law, and that a writ of sequestration issue to the sheriff of Alcorn county commanding him to sequest- the goods and chattels, wares and merchandise, in the storehouse in the town of Kossuth, in said county of Alcorn, in which Cates & Andrews lately did business, now in the possession of J. K. Herman.

And complainant- further prays that your honor appoint a receiver to take charge of the notes, accounts, claims, and demands due the said R. C. Cates, D. Andrews, and L. L. Cates or either or any of them and pay the money into court till complainants' demand is satisfied in full, and then to such other creditors as may choose to come in and make themselves parties to this bill in the order in which they are made parties or as to the court may seem best, and that the filing of this bill be held to give complainants a first lien on all the effects of said R. C. Cates, D. Andrews, and Luke L. Cates in the hands of the said F. G. Smith and J. K. Herman or in the hands of either of said parties or any other person and all the real estate herein described for the full and complete satisfaction of the debt and demand of complainant-.

And complainant- further prays for such other, further, different, or general relief as to your honor shall seem fit and proper; and, in duty bound, will we pray, &c.

J. Q. ROBINS,
Sol. for Compl'ts, Allen, West & Bush.

Filed Dec. 8th, 1886, at 7 o'clock a. m.
W. C. BESSONETT, *Clerk.*

11 STATE OF MISSISSIPPI, }
Lee County. }

Chancery Court. May Term, 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } Amendment to O. B.

Amendment to Original Bill in This Cause.

Complainants, for amendment to their original bill in this cause, say that a large number of persons are indebted to Andrews, Cates & Co., the defendants in this cause, and now here give a list of the

more important debtors of said firm, and describes them as notes or accounts, and give the residence- of the debtors, and asks that all of said debts be subjected to the payment of complainants' demands, and that the filing of this amendment be held to give complainants a first lien on the debts due from all of the parties from whom the sum is due and owing. The list is hereto appended to this bill and prayed to be taken as part hereof and as a part of the original bill. All of the books of accounts of said firm and notes are now in the possession of P. A. Green, deputy sheriff of Lee county, levied on by virtue of the writ of sequestration in this cause and by a writ of attachment in favor of S. W. Gardner, subject, however, to the levy of the writ of sequestration the lien thereof; and your complainants pray that a receiver be appointed to collect all of said debts due said firm of Andrews, Cates & Co., and hold the same subject to the orders of this court, and that complainants have a first lien
12 thereon to pay their demands against said Andrews, Cates & Co. and R. C. Cates, D. Andrews, & L. L. Cates. When the debts are on open account the books of account of Andrews, Cates & Co. show the particular items of each account, which are now referred — for the purpose of showing the particular items of each account; and complainants will ever pray, &c.

J. Q. ROBINS,
Sol. for Compl'ts.

All of the claims are on open account.

Wm. Lynn Burton	48 27	Tupelo.
J. M. Suddoth	163 36	Pontotoc.
J. A. Ballard, Jr.	200 31	Tupelo.
W. B. Adams	28 01	Do.
B. F. Francis	35 00	Bolands.
Clem. Moore	6 50	Fulton.
Jno. Simmons	20 25	Macedonia.
W. S. Ikner	13 00	Saltillo.
Wm. and Jno. Russell	71 34	Chesterville.
Will. Logan	58 11	Mooreville.
Albert Lawhorn	11 00	Fulton.
J. M. Caruthan	12 13	Mooreville.
W. F. Doty	52 55	Tupelo.
Jno. Burch	18 80	Fulton.
J. A. Whitehurst	10 25	Poplar sp'gs.
Gus Pearce	36 98	Pierce's store.
Total	791 86	

D. W. Clark'- account suit pending in circuit court of Lee Co. 171 00

13 *Notes.*

P. Cates	25 00
W. J. and Jno. Clayton	22 44
J. R. and Jno. Clayton	89 35
John Clayton	117 40
J. M. Clayton & Co.	248 80
" "	223 10
" "	237 50
C. N. and J. N. Finley	56 50
David Johnson	19 59
C. L. Deaton	166 65
Henry and Jno. Fitts	52 95
M. L. Goodlett	88 05
M. A. Lambert	39 12
Jno. and Jas. Whitesides	149 50
J. F. Pierce	123 20
Thos. Brooks, Jr.	90 22
P. H. Green	10 79
S. D. Sandifer	31 45
Frank McWhorter	150 00
" "	150 00
Joe McCord	9 22
W. H. Nunnelee	48 73
S. A. Matthews	333 90
	2,483 46

All these are notes on hand.

14			
Dan. Pitts	No int.	42 16	Cherry creek.
A. J. Doty		76 90	Tupelo.
J. R. Whitesides		64 15	Mooresville.
Jack Mann		1,000 00	Tupelo.
James Hair		38 30	Mooresville.
G. A. Morris		23 25	"
Jno. Gunter	$9.49 int. = $9.49	34 04	"
S. H. Foster		14 18	Poplar sp'gs.
Cates & Gather		31 26	Fulton.
Zack. Caldwell		37 46	Chesterville.
Baskin Bros.	Int. on $173.25 from 1, 1, '86.	197 02	"
W. F. Mann	T. D. on 3 horses	442 76	Tupelo.
J. A. Thompson		100 92	"
L. W. Stovall	T. D. int. on $191.26.	163 37	Richmondlee.

W. P. Herring		All these claims on this page are claims on open account.	55 48	Tupelo.
Earle Seals			62 02	Cherry c'k.
Sam. Barr	Int for 1 y'r.		58 09	Pontotoc.
John Springer			34 10	Richmondlee.
W. D. McCurty			34 62	Mooresville.
Mrs. E. D. Alexander			33 32	Chesterville.
Wm. Rains			37 11	Tupelo.
A. D. Martin			74 52	Richmondlee.
J. A. Mobley	T. D.		343 77	Tupelo.
Joe Raper			11 63	Mooresville.
Jno. Maxey			16 04	Chesterville.
Levi Whitesides			51 35	Tupelo.
W. B. Long, sh'ff			17 20	"
T. B. Taylor	T. D.		52 71	Mooresville.
Ryan & Marstellar	R. R'd contractors.		602 89	"
O. H. Moore, Mrs.			40 41	Tupelo.
15				
W. T. Filgo			35 22	Tupelo.
W. L. Jones			19 45	"
Jesse Moore, for W. H. Young.	Int on 21.39 for 1 y'r.		49 50	Richmondlee.
H. C. Medford			47 99	Tupelo.
Dr. J. S. Montgomery			56 38	Starksville.
E. T. Turpley			43 71	Tupelo.
J. Y. Leatherwood			293 01	"
			4,376 01	
Thos. S. & Jesse Moore	Int. from 1, 1, '86		29 05	Richmondlee.
H. P. & J. H. Kelly	" " "		10 75	Poplar sp'gs.
Wm. Nesbitt	" on $50.00 from 1, 1, '86.		22 41	Cherry cr'k.
J. A. Ballard, Sr.	No int.		5 09	Mooresville.
J. H. McCarter	" "		21 80	Macedonia.
T. J. Wood	" "		10 82	Chesterville.
M. A. Tully	Int. on $114.28 from 1, 1, '86.		129 78	Mooresville.
Dr. C. Hussey	Int. on $62.64 from 1, 1, '86.		35 68	Richmondlee.
R. D Logan	Int. on $25.00, 2 y'rs.		66 96	Tupelo.
J. H. Fennell	No int.		34 20	"
Rod. Reese	Int. for 2 y'rs		40 95	"
Wm. Mauldin	" " 1 "		8 75	Chesterville.
D. J. Austin	No int.		92 90	"
R. E. Pritchard	" "		61 30	Poplar spr.
Aaron & Thos. Brook, Sr.	Int. for 1 y'r		30 40	Richmondlee.

W. M. Fields	Int. for 1 y'r	23 25	Pontotoc.
G. W. Springer	" " 1 "	31 20	Richmondlee.
Tupelo corporation	No int.	20 42	
Tupelo Compress Co., 6 shares.		300 00	
O. L. Stribling	No int.	85 77	Tupelo.
J. W. Thomas	" "	44 44	"
W. W. McPerson	" "	26 93	"
16			
Mrs. M. R. Anderson	" "	11 15	Tupelo.
F. J. Johnson	" "	30 77	Fulton.
Jno. Knight		103 88	Cherry cr'k.
Tom Beene		35 71	Mooresville.
James Nunalee	Int. on $78.01 from 1, 1, '86.	85 16	Chesterville.
J. J. Furr		103 58	Coonewar.
J. P. Baldridge		131 75	Fulton.
W. A. McCanless		6 54	Tupelo.
P. Cates		38 80	Fulton.
Adam Camp		32 21	Chesterville.
W. W. Thurman	Int. on $164.89 from 1, 1, '86.	170 19	Birmingham.
J. S. Gryder	Int. on $74.35 for 1 y'r.	54 35	Fulton.
Wharton Bros.		65 82	Chesterville.
Lee Trapandhands		376 04	Mooresville.
J. L. Rains	Int for 1 y'r	59 96	Tupelo.
		2,437 81	

Filed Dec. 9th, 1886, at 11 o'clock a. m.

W. C. BESSONETT, *Clerk.*

17

EXHIBIT A.

Mess. Andrews, Cates & Co. in account with Allen, West & Bush.

1886.			Days.	Eight per cent. interest.
Aug. 29.	To bal. trans. from Luke Cates & Co.	14,699 87	104	339 73
Dec. 11.	" comm. on deficit, as by agreement, say, 1,460 b. c., @ $1.25	1,825		
" "	" interest balance	338 57		
		16,863 44		339 73
1886.	CREDIT.			
Oct. 1.	By proceeds 1 b. c.	32 15	71	50
" 27.	" " 2 "	65 91	45	66
Dec. "	" balance	16,765 38		
		16,863 45		1 16
Dec. 11.	To balance due Allen, West & Bush	16,765 38		

E. & O. E.

New Orleans, Dec. 11, 1886.

2—153

John R. Harrell, being sworn, deposes and says that he is the book-keeper of Allen, West & Bush, cotton factors & commission merchants in the city of New Orleans, La., & that the above & foregoing two accounts of said firm against Luke Cates & Co. & Andrews, Cates & Co. are just & true; that they are due to the said Allen, West & Bush, & that all just & lawful effects, payments, & audits have been allowed.

JNO. R. HARRELL.

Sworn to and subscribed before me this 15th December, 1886.
THEO. GUYOL, *Not. Pub.*

18 EXHIBIT "B."

Andrews, Cates & Co. to ——— } Deed of assignment.

This indenture, made and entered into this the 7 day of December, A. D. 1886, by and between R. C. Cates and D. Andrews, copartners under the firm name and style of Cates and Andrews, and D. Andrews, R. C. Cates, & Luke L. Cates, copartners under the firm name and style of Andrews, Cates & Co., the said R. C. Cates and D. Andrews being the same persons in each of said firms, and R. C. Cates & D. Andrews & L. L. Cates, individually, of the first part, and Dr. J. K. Herman and F. G. Smith, of the second part, witnesseth:

That the said first parties are justly indebted to sundry persons in sundry considerable sums of money and are unable to pay off and discharge the same in full. Now, therefore, the- presents witnesseth that the said first parties, for and in consideration of the sum of five dollars to them in hand paid, the receipts whereof is hereby acknowledged, and the further consideration hereinafter mentioned, have granted, bargained, sold and conveyed, and transferred, assigned, set over, and released, and by these presents, after reserving to themselves and each of them respectively the property, real and personal, which by law they are entitled to as exempt from sale under execution or attachment, do grant, bargain, sell and convey, assign, set over, and transfer, unto the said second party all and singular the lands, tenements, and hereditaments of the said parties of the first part, wherever situated, especially that situated, lying, and being in the counties of Alcorn and Lee, in the State of Mississippi, and all the goods, chattels, wares, merchandise, bills, bonds, notes, book accounts, claims, demands, judgements, choses in
19 action, evidences of debts, and all property, of every nature and description, of the said first parties, whether as copartners or as individuals, saving and reserving only as aforesaid; to have and to hold the same and every part and parcel thereof, with all appurtenances thereto belonging, to the said second parties, but in trust, however, for the following uses, intents, and purposes, and none other—that is to say: That the said parties of the second part

shall take possession of all and singular the lands, tenements, and hereditaments and also other of the property and effects hereby assigned or intended to be, and shall, with all reasonable diligence, sell and dispose of the same, either at public or private sale, as in their judgement may appear best and most for the interest of the parties concerned and convert the same into money, and shall also collect all and singular the said debts, dues, bills, bonds, notes, accounts, choses in action, claims, demands, and judgements and deliver good and sufficient deeds, bills of sale, releases, and all other instruments that may be necessary and proper to effect a sale *said* transfer of any and all of the said property hereby assigned or intended so to be; and with and out of the proceeds of such sale and collections the said second party shall first pay and discharge all the just and reasonable expenses, costs, charges, and commissions of making and executing and conveying into effect this assignment and the trust hereby created, including a compensation to the said second parties for their services in executing the same, and shall also pay to T. D. Young, Esq., a reasonable attorney's fee for preparing and maintaining this assignment, if assailed, out of the general fund realized out of the property aforesaid, and thereafter the said second parties, out of the residue of the proceeds and avails of such
20 sales and collections, shall pay and discharge the debts of the said first parties respectively in the order and manner following—that is to say, first, said second party is to pay to S. T. Harkey whatever may be due him for services as clerk in the house of the said Andrews, Cates & Co., heretofore rendered, if anything; then to Tishomingo Savings Institute of Corinth, Mississippi, the amount due it on the notes of the said firm of Andrews, Cates & Co., together with the interest thereon, according to their tenor and effect, in full, as well as the entire indebtedness of the said Andrews, Cates & Co. thereto; then to Dr. S. W. Gardner the indebtedness and liability of said firm of Andrews, Cates & Co. to him; then to Allen, West & Bush whatever may be due them from said firm of Andrews, Cates & Co. on settlement, and then to Mess. Hill, Fontaine & Co. whatever may be due them on settlement as preference claims; all to be paid in the order and manner aforesaid out of the money realized from the assets of the said firm of Andrews, Cates & Co. if sufficient for that purpose; if not, then out of the individual assets of each of the partners in said firm and the overplus realized from the assets of the said firm of Cates & Andrews after the payment, discharge, and satisfaction of the indebtedness of the said firm of Cates and Andrews proper, or so much thereof as may be necessary, applying the surplus from the above after the payment of the preferred claims aforesaid in the order aforesaid, if any, ratably between all the other creditors of the said firm of Andrews, Cates & Co. until their debts are satisfied in full; second, the said second parties are to pay out of the money realized from the assets of the said firm of Cates & Andrews after the payment of the expenses, commissions, and attorneys' fee aforesaid, which is to come out of the common fund under this assignment, the entire indebtedness of the
21 said firm of Cates and Andrews, rateably and without pref-

erence, if there is sufficient for that purpose, and the overplus, if any, as hereinbefore provided, and, if not sufficient, then if there should be any surplus from the individual assets of the said parties composing the said firm or copartnership or from the assets of the said firm of Andrews, Cates & Co. after the payment of the preferred claims aforesaid and all the other creditors in full of the said firm of Andrews, Cates & Co. in the order and manner aforesaid, then such surplus is to be distributed ratably among the creditors of the said firm of Cates & Andrews, so far as it will go or until the same are all discharged and satisfied in full, it being the purpose and intention of the said first parties, both as partners and as individuals, to devote in the way, manner, and mode aforesaid outside of their legal exemptions, as hereinbefore provided, to the payment and satisfaction of all of their indebtedness and liabilities of that, their entire partnership and individual property, saving every kind and description as aforesaid; and this indenture witnesseth further that the said second parties are to proceed as speedily as possible to make out an inventory of all the property herein and hereby conveyed, and in making sale of said property they may, in the exercise of their best judgment for the interest of all their debtors, sell either in pieces, parcels, or in bulk, and if they make a public sale thereof or any part thereof they may give such notice of the time of sale by posting or otherwise as they may deem best for the interest of the creditors and all concerned. The lands of the said first party and each of them, whether described herein par-
22 ticularly or — the schedule of land hereto appended as part hereof, are all intended to be conveyed by this instrument to the intent and purpose of aforesaid, whether specifically described or not, as well as all the other of said property conveyed hereby. A schedule of the creditors of the said first parties respectively is hereto appended and it is supposed to be complete, but if any are entitled it is nevertheless intended that they shall participate in the benefits of this assignment nevertheless.

In witness of the foregoing we hereunto set our hands and affix our seals this the day and date above written.

R. C. CATES. [SEAL.]
LUKE L. CATES. [SEAL.]
D. ANDREWS. [SEAL.]

We, the undersigned, hereby accept the trust above imposed this 7th day of December, A. D. 1886.

J. K. HERMAN.
F. G. SMITH.

The following-described real estate conveyed in the said foregoing assignment, to wit: One brick storehouse and lot in the town of Tupelo, in the county of Lee and State of Miss., known as the Murphy brick store, and more particularly described in deed from John M. Allen to L. L. Cates, R. C. Cates, and D. Andrews, on record in the office of the chancery clerk of said county & State, to which reference is made for a better and more perfect description thereof for

the purpose of this conveyance; and also 53⅓ acres of the N. E. ¼ of sec. 14, T. 10, R. 7, and 53⅓ acres of the S. E. ¼ of sec. 14, T. 10, R. 7, said 53⅓ acres being on the south side of said above quarter of land respectively, situate, lying, & being in the county of Itawamba and State of Miss.; and the following-described lands belonging
23 to D. Andrews in Alcorn county, Miss., to wit: The S. E. ¼, sec. 10, T. 2, R. 5; the S. E. ¼, sec. 19, T. 2, 6; the S. W. ¼, sec. 31, T. 2, R. 7; the E. ½ N. W. ¼, sec. 31, T. 2, R. 7; the following lands conveyed by the foregoing assignment as belonging to R. C. Cates & D. Andrews or Cates and Andrews are situated in the county of Alcorn & State of Miss., to wit: The N. E. ¼ of the S. E. ¼ of sec. 2, T. 3, R. 5; the E. ½ of the S. E. ¼ of sec. 3, T. 3, R. 6; one storehouse and lot fronting 44 ft. on street running east & west in the town of Kossuth, running north 100 ft., west 44 ft., south to street 100 ft., the house in which Cates & Andrews conduct a mercantile business in the said town of Kossuth, said house and lot being situated in the S. W. ¼ of sec. 26, T. 2, R. 6, in the county of Alcorn and State of Miss; and also 170 acres of land lying in Tippah county, Miss., and described in deed from M. W. Pittman & Jack Pittman to R. C. Cates & D. Andrews, on record in said county; and the following tract or parcel as the individual property of R. C. Cates, to wit: N. E. ¼ sec. 6, T. 2, R. 6, and individual half interest in the W. ¼ of sec. 36, T. 2, R. 5, and an individual one-half in two acres of land in the town of Kossuth, in the S. W. ¼ 26, 2, 6, known as the old foundry lot in said town, all in county of Alcorn and State of Miss.

Schedule of the Creditors of the Firm Cates, Andrews & Co.

Gus. Arnold & Co., note and ac.	$850 00
J. & A. Simpkinson & Co., note & ac.	1,250 00
Bamberger, Bloom & Co., ac.	875 00
Rankins, Snyder Hardw. Co., ac.	75 00
Stratton & Trestigge, ac.	27 00
Monroe Bros. & Co., ac.	330 00
Bohen Bros. & Co., ac.	282 00
Harbison & Gathwright, ac.	50 00
Bell factory	157 00
Winfred Sons & Manphine	90 00

24 *List of the Creditors of Andrews, Cates & Co.*

Gans, Arnold & Co.	$910 96
Geo. B. Clint, Bros. & Co.	69 65
J. & A. Simpkinson & Co.	1,107 35
A. & J. Tronstine & Co.	506 00
Bamburger, Bloom & Co.	1,029 31
Memphis Sad-lery Co.	211 99
R. & T. A. Ennis	9 35
The Bell factory	157 75
Bohen Bros. & Co.	548 49

Topp, Leathens & Co.	$116 00
McCord & Aydleott	254 00
Richardson, Marrow & Co.	41 85
Humbolt Wagon Co.	40 00
Stewart, Ralph & Co.	69 00
Chess-Cailey Oil Co.	23 00
Phillips & Butorff	94 55
R. L. Cochran & Co.	39 20
Sperry & Bowen	21 15
Chilton, Guthrey & Co.	87 43
Delbridge Printing Co.	10 85
Schmidt & Zeigler	25 25
Halliday & Bros.	11 57
E. C. Meacham & Co.	13 25
Oak City M'f'g Co.	107 90
Charles Buffum & Co.	274 40
Meek, Finger & Co.	230 30
Denny, Lyles & Andrews	184 05
Shapleigh-Cantwell Hdw. Co.	334 96
N. J. Fairbanks & Co.	31 66
Jno. F. Adams & Co.	65 01
J. O. Parchman	4 00

25 THE STATE OF MISS., }
Alcorn County. }

Personally appeared before the undersigned, clerk of the chancery court in and for the county of Alcorn and State of Mississippi, R. C. Cates, who acknowledged that he signed, sealed, and delivered the foregoing deed or instrument of conveyance for the purpose and consideration therein expressed as his act and deed.

Given under my hand and seal this the 7th day of December, A. D. 1886, at office, in the city of Corinth, in said county and State.

J. T. HUMPHREY, *Clerk.*

THE STATE OF MISS., }
Lee County. }

Personally appeared before me, the undersigned, an acting chancery clerk in and for the county & State aforesaid, L. L. Cates & D. Andrews, who acknowledged that *he* signed, sealed, and delivered the foregoing deed for the purpose and consideration therein expressed as *his* act and deed.

Given under my hand & official seal this the 7th day of December, A. D. 1886, as affixed in the town of Tupelo.

W. C. BESSONETT,
Chancery Clerk.

The deed of assignment, of which the next foregoing is a true copy, was filed in my office for record on the 7th day of December,

A. D. 1886, at 5½ o'clock p. m., and the same is now duly recorded in my office.

Given under my hand this the 7th day of December, 1886.

W. C. BESSONETT, *Clerk.*

THE STATE OF MISS., }
Lee County. }

I, W. C. Bessonett, clerk of the chancery court in and for said county and State, do hereby certify that the above and foregoing is a just, true, and perfect copy of a deed of assignment from Andrews, Cates & Co. to J. K. Herman and F. G. Smith, as appears of record in my office, and that the same is duly recorded in Book No. 33, pages 472 to 476, of record of deeds.

Given under my hand and the seal of said court, at my office, town of Tupelo, this the 10th day of December, 1886.

W. C. BESSONETT, *Clerk.*

26

J. H. ALLEN *et al.* }
v. } Affidavit.
R. C. CATES *et al.* }

STATE OF MISSISSIPPI, }
Lee County. }

Personally appeared before the undersigned, chancery clerk of said county, J. Q. Robbins, agent and attorney for Allen, West & Bush, who makes affidavit that he has good cause to believe and does believe that there is danger of the transfer of a certain stock of goods, wares, and merchandise described in the bill in this cause in the brick store in the town of Tupelo, on the corner of Broadway and Main street, known as the Murphy brick store, lately occupied as a place of business by Andrews, Cates & Co. and now in the possession of F. G. Smith, so as to defeat the rights of complainants in this case, and that such transfer is about to occur.

J. Q. ROBINS.

Sworn to and subscribed before me this 8th day of Dec., 1886.

W. C. BESSONETT,
Ch'c'y Clerk.

27

Affidavit.

THE STATE OF MISSISSIPPI, }
Lee County. }

Personally appeared before the undersigned, clerk of the chancery court of Lee county, J. Q. Robbins, agent and att'y for Allen, West & Bush, who make affidavit that he is informed and verily believes that the stock of goods, wares, and merchandise in the brick storehouse in Tupelo, lately occupied as a place of business by Andrews, Cates & Co., on corner of Main street and Broadway, known as the Murphy brick store and now in the possession of F. G. Smith,

is not worth more than about $10.000.00, and that that amount would be a fair valuation for said stock of goods, wares, and merchandise.

J. Q. ROBINS.

Sworn to and subscribed before me this 8th day of December, 1886.

W. C. BESSONETT,
Ch'c'y Clerk.

28 *Bond of Sequestration.*

Know all men by these presents that we, J. H. Allen, T. H. West, and J. C. Bush, composing the firm of Allen, West & Bush, as principals, and J. Q. Robbins, J. M. Allen, & F. Elliott, as sureties, are held and firmly bound unto R. C. Cates, D. Andrews, L. L. Cates, F. G. Smith, and J. K. Herman in the penal sum of twenty thousand dollars ($20,000.00), well and truly to pay which we bind ourselves, our heirs and our legal representatives.

The condition of the above obligation is that whereas the above-bound Allen, West & Bush pray for writ of sequestration against the stock of goods, wares, and merchandise in the brick storehouse, corner of Maine street and Broadway, in the town of Tupelo, lately occupied as a place of business by Andrews, Cates & Co. and now in the possession of F. G. Smith and known as the Murphy brick store, and said stock of goods, wares, and merchandise being valued by the clerk from affidavit on file at $10,000.00: Now, if the said J. H. Allen, T. H. West, &. J. H. Bush pay all such damages as the defendants shall suffer from the wrongful seizure and detention of said goods, wares, and merchandise, then this obligation shall be utterly void and of none effect; otherwise to remain in full force and effect.

Witness our signatures this December 9th, 1886.

J. Q. ROBINS.
J. M. ALLEN.
F. ELLIOTT.

J. H. ALLEN,
By J. Q. ROBINS,
Ag't & Att'y-in-Fact.
T. H. WEST,
By J. Q. ROBINS,
Ag't & Att'y-in-Fact.
J. C. BUSH,
By J. Q. ROBINS,
Ag't & Att'y-in-Fact.

I approve the above bond and security.

W. C. BESSONETT,
Ch'c'y Clerk.

29 STATE OF MISSISSIPPI, }
Lee County. }

Writ of Sequestration.

To the sheriff or any lawful officer of said county, Greeting:

Whereas affidavit has been filed and bond given as required by law, we command you to seize and take into possession the following personal property, to wit, the entire stock of goods, wares, and merchandise in the brick storehouse on the corner of Maine street and Broadway, in the town of Tupelo, lately occupied as a place of business by Andrews, Cates & Co. and now in the possession of F. G. Smith and known as the Murphy brick store, said stock of goods valued by me from affidavit on file at $10,000.00; said property being in Lee county, Mississippi, and to hold the same until further ordered by the court or chancellor, or until the defendants from whose possession the same is taken shall enter into —, with good security, payable to the complainant, in double the value of the property to be assessed by you—conditions, to have the property forthcoming to abide the decree to be made by the court in the cause—and return said bond with this writ.

We further command you to have the foregoing writ, with your doings thereon, before the honorable chancery court of Lee county on the 1st Monday in May, 1887.

Witness my signature and official seal this 8th day of December, 1886.

W. C. BESSONETT,
Ch'c'y Clerk.

30 *Sheriff's Return.*

Executed this process this day by levying same on a general stock of merchandise, consisting of dry goods, clothing, boots, shoes, hats, caps, hardware, queen-ware, notions, groceries, iron safe, and contents, consisting of sixty-three and $\frac{50}{100}$ dollars in cash and notes & accounts, &c., &c., and the books of said accounts; said property found in the brick storehouse on the corner of Maine and Broadway streets, in the town of Tupelo, and known as the Murphy brick storehouse, an inventory of which is hereto attached, amounting in the aggregate to the sum of $10,700.99, and valued by me at the sum of $8,200.00, and by taking said property into my possession, levied on as the property of the defendants, Andrews, Cates & Co., to satisfy this writ and all costs. Levied this 8th day of December, 1886, at 8 o'clock and 40 minutes a. m.

W. B. LONG, *Sh'ff*,
By P. A. GREEN, *D. Sh'ff.*

31 Invoice of goods sequestered by W. B. Long, sheriff, December 8th, 1886, under writ of sequestration in this cause—items omitted from transcript by consent—showing an aggregate of $10,700.99.

32 *Chancery Court Summon-.*

THE STATE OF MISSISSIPPI, }
Lee County. }

To the sheriff of Lee county, Greeting:

You are hereby commanded to summon L. L. Cates, D. Andrews, & F. G. Smith, if to be found in your county, to be and personally appear before the chancery court of Lee county, at the court-house of said county, in the town of Tupelo, on the first Monday of May, 1887, then — there to plead, answer, or demur to bill of J. H. Allen *et al.* exhibited against R. C. Cates *et al.*, wherein you are defendant.

Herein fail not, and have you then and there this writ.

Issued under my hand and seal of said court, at office, in Tupelo, the 8th day of December, 1886.

W. C. BESSONETT, *Clerk.*

Executed this process by delivering to L. L. Cates, D. Andrews, and F. G. Smith, each in person, a true copy hereof this Dec'r 8th, 1886.

W. B. LONG, *Sh'ff.*
P. A. GREEN, *D. Sh'ff.*

33 *Chancery Court Summon-.*

THE STATE OF MISSISSIPPI, }
Lee County. }

To the sheriff of Alcorn county, Greeting:

You are hereby commanded to summon R. C. Cates & J. K. Herman, if to be found in your county, to be and personally appear before the chancery court of Lee county, at the court-house of said county, in the town of Tupelo, on the first Monday of May, 1887, then and there to plead, answer, or demur to bill of J. H. Allen *et al.*, compl't-, against R. C. Cates *et al.*, defendants, No. 1155, in the chancery court of Lee county, Miss.

Herein fail not, and have you then and there this writ.

Issued under my hand and seal of said court, at office, in Tupelo, the 8th day of Dec'r, 1886.

W. C. BESSONETT, *Clerk.*

Lee Chancery Court, May Term, 1887.

Received the 8th day of Dec., 1886. Executed by personal service and by handing a true copy of the within writ to R. C. Cates & J. K. Herman, the defendants, this 20 day of Dec., 1886.

B. F. WILLIAMS, *Sheriff,*
By N. N. BYNUM, *D. S.*

I hereby appoint & deputise N. M. Bynum my special deputy to execute & return the within writ.

B. F. WILLIAMS, *She'ff.*

34 THE STATE OF MISSISSIPPI, }
Lee County. }

Chancery Court, May Term, 1887.

J. H. ALLEN *et al.* }
v. } 1155. Petition of J. W. Hoyle to be Made Party.
R. C. CATES *et al.* }

To the honorable chancery court of Lee county:

The petition of J. W. Hoyle would respectfully show unto the court that he is a creditor of Andrews, Cates & Co.; that they are indebted to him in about the sum of seventy-five dollars, and therefore prays to be made a party to the bill in this cause, and that his lien attach on said property, subject to the rights and prior lien of the creditors who have already joined in said bill, and that those coming in after the filing of this petition come in subject to petitioner's rights & claims and liens. Petitioner's claim is open account and is part due, and — petition will appear an itemized account of his claim, marked Exhibit "A," hereto —, and prays the same to be taken & considered a part of this petition; and petitioner prays that all the allegations of said bill of complaint be taken as here again reiterated; and petitioner will ever pray, &c.

J. Q. ROBBINS,
Sol. for Petitioner, J. W. Hoyle.

Filed Dec'r 8th, 1886, at 11 o'clock a. *p.*
W. C. BESSONETT, *Clerk.*

35 THE STATE OF MISSISSIPPI, }
Lee County. }

Chancery Court, May Term, 1886.

J. H. ALLEN *et al.* }
v. } No. 1155. Petition J. W. Hoyle to Dismiss His Petition.
R. C. CATES *et al.* }

And now comes the petitioner, J. W. Hoyle, by his attorney, who has petitioned to be made a party to the original bill in this cause, and dismisses his petition and pays the cost thereof, & this shall be the clerk's order to dismiss.

J. Q. ROBINS,
Solicitor for J. W. Hoyle.

Filed Dec'r 11th, 1886.

W. C. BESSONETT, *Clerk.*

36 STATE OF MISSISSIPPI, *Lee County.*

Chancery Court, May Term, 1886.

J. H. ALLEN *et al.* v. R. C. CATES *et al.* } Petition of A. & J. Troustine & Co. to be Made Parties.

A. & J. Troustine & Co., resident citizens in the city of Cincinnati, Ohio State, come in & ask to be parties complainant in the above-styled cause of J. H. Allen & others against R. C. Cates & others, No. 1155, in the chancery court of Lee county, State of Mississippi, & would show that the said R. C. & L. L. Cates & the said D. Andrews are indebted to these complainants in about the sum of five hundred & six dollars for goods, wares, and merchandise sold them, & that the same is due and unpaid, & the said defendants fail & refuse to pay the same, and complainant- aver & charge all & singular the averments in the bill in this case in *his* own behalf & prays the benefit thereof, & also as well of the liens, injunctions, writs of sequestration, & all other orders, demands & reliefs, & benefits appertaining to the same, & prays that their lien may date from the filing of this petition.

A. & J. TROUSTINE & CO.

J. A. BLAIR,
Att'y for A. & J. Troustine & Co.

Complainants aver that their debt is about eight hundred dollars, part past due & a part not yet but very soon to be due.

J. A. BLAIR,
Att'y for Comp'ts.

Filed December 8th, 1886, at 2.15 p. m.

W. C. BESSONETT, *Clerk.*

37 THE STATE OF MISSISSIPPI, *Lee County.*

In Chancery, May Term, 1887.

J. H. ALLEN *et al.* v. R. C. CATES & Co. *et al.* } 1155.

The Memphis Saddlery Co., composed of —— ——, resident citizens of the city of Memphis and State of Tennessee, come in and ask to be parties complainant in above suit of J. H. Allen *et al. v.* R. C. Cates *et al.*, No. 1155, in the chancery court of Lee county, in said State, and would state that the said R. C. & L. L. Cates and the said D. Andrews are indebted to these complainants in about the sum of two hundred twenty-five (225) dollars for goods, wares, & merchandise sold to them, & that the same is not yet due, but will mature on the — day of ——, 1886, and that the said defendants fail & refuse to pay the same or to secure the payment in anywise whatsoever;

and these complainants aver and charge all & singular the averments in the original bill in this case in their own behalf & pray the benefit thereof; also as well of the liens, injunctions, writs of sequestrations, and all other orders, reliefs, & benefits appertaining to the same, and pray that their lien may date from the filing of this petition.

C. D. & W. F. CLARKE,
Sol's for Memphis Saddlery Co.

Filed December 8th, 1886, at 3 o'clock p. m.
W. C. BESSONETT, *Clerk.*

38 STATE OF MISSISSIPPI, *Lee County.*

Chancery Court, May Term, 1887.

J. H. ALLEN *et al.* v. R. C. CATES *et al.* } 1155. Petition Ed. R. Richardson *et al.* to be Made Parties to Suit.

The petition of Ed. R. Richardson, J. R. Mason, & Jas. B. Richardson, resident citizens of the city of Nashville, in the State of Tennessee, would show as follows: That they are auditors of Andrews, Cates & Co., a mercantile firm composed of R. C. Cates, D. Andrews, and L. L. Cates, and petitioners ask to — made parties complainant to the above-styled cause now pending in the chancery court of Lee; that said R. C. Cates, D. Andrews, & L. L. Cates are indebted to petitioners in about the sum of $221.60 on open account and the same is past due and unpaid, a sworn copy of which is herewith filed and marked Exhibit "A" and prayed to be taken as part of this bill; and petitioners charge and aver all the allegations in the original bill in this cause contained the same as if all the allegations of said bill were here reiterated and repeated, and claims the benefit of all of said charges and all the liens acquired by the filing of said bill and the levy of the writ of sequestration in this case; and petitioner- prays that all proper orders be entered and made and petitioners' lien date from the filing of this petition, and that all parties coming in afterwards come in subject to petitioners' rights & liens; & in duty bound will ever pray, &c.

J. Q. ROBINS,
Sol. for Petitioner-, Richardson, Mason & Co.

39 EXHIBIT "A."

NASHVILLE, TENN., *Dec'r* 9, 1886.

Mess. Andrews, Cates & Co., Tupelo, Miss., bought of Richardson, Mason & Co., wholesale boots and shoes, north side Public square.

Terms. 4 months.

No. p'rs.	Bill bought June 23, '86.	Size.	Price.	
30	Men's D. S. kipb rogans 10-6, 15-8	5-9	1 10	33 00
30	" P. S. " " 15-9	15-10	1 10	33 00
	Dray			25
	Bill bought Oct. 20, 1886.			66 25
30	Misses' pegs aif polkas, 60	12-2	18 00	
30	Child's " " " 45	7-11	13 50	
30	" " " Polish, 40	5-8	12 00	
	Dray		25	
				43 75
				110 00
1886.	CREDIT.			
Oct. 25	By cash			68 15
				41 85
	Pro'g ac.			50
				42 35

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me, J. B. Brown, a notary public in and for said State and county, duly commissioned, authorized, and qualified according to law, E. R. Richardson, who, being duly sworn by me, deposes and says he is one of the firm of Richardson, Mason & Co.; that the foregoing account against Andrews, Cates & Co. is correct, due, unpaid, and is just; that there are no other offsets to be allowed or credits to be given on said account; that the amount owing on said account is for goods and merchandise sold and delivered to the said Andrews, Cates & Co. by the said Richardson,
40 Mason & Co.; that the said Andrews, Cates & Co. is justly indebted to Richardson, Mason & Co. in the sum of forty-one $\frac{85}{100}$ dollars, together with interest and charges.

E. R. RICHARDSON.

Sworn to and subscribed before me this 9th day of December, 1886.

J. B. BROWN,
Notary Public.

NASHVILLE, TENN., *Dec'r* 9, 1886.

Messrs. Cates & Andrews, Kossuth, Miss., bought of Richardson, Mason & Co., wholesale boots and shoes, north side Public square.

Terms: October 15, 4 months.

No. case.	No. p'rs.	Bill bought Aug. 23, 1886.	Size.	Price.	
1	12	Men's kip Pembroke boots	6-11	2 50	30 00
2	12	Boys' " " "	3-5	1 75	21 00
3	12	Youths' " " "	10-3	1 25	15 00
4	60	Miss.' D. S. aif polkas	12-2	57½	34 50
5	60	W'n's " " "	3-8	67½	40 50
6	30	Child's " " "	5-8	37½	11 25
6	30	" " " "	7-11	42½	12 75
7	30	" " " "	9-13	47½	14 25
		Dray			50
					179 75
		Provi'g ac.			50
					180 25

STATE OF TENNESSEE, }
Davidson County. }

Personally appeared before me, J. B. Brown, a notary public in and for said State and county, duly commissioned, authorized, and qualified according to law, E. R. Richardson, who, being duly
41 sworn by me, deposes and says he is one of the firm of Richardson, Mason & Co.; that the foregoing account against Cates and Andrews is correct, due, unpaid, and is just; that there are no other offsets to be allowed or credits to be given on said account; that the amount owing on said account is for goods and merchandise sold and delivered to the said Cates & Andrews — is justly indebted to Richardson, Mason & Co. in the sum of one hundred & seventy-nine $\frac{75}{100}$ dollars, together with interest and charges.

E. R. RICHARDSON.

Sworn to and subscribed before me this 9th day of Dec'r, 1886.

J. B. BROWN,
Notary Public.

Filed Dec. 8th, 1886, at 6.45 p. m.

W. C. BESSONETT, *Clerk.*

42 STATE OF MISSISSIPPI,
Lee County.

Chancery Court, May Term, 1886.

J. H. ALLEN *et al.*
v.
R. C. CATES *et al.*

1155. Petition of Hill, Fontain & Co. to be Made Parties, &c.

HILL, FONTAIN & Co., Resident Citizens of the City of Memphis, in the State of Tennessee, & Merchants Doing Business under the Above Name & Composed of Napoleon Hill, Jerome Hill, Noland Fontain, & J. H. Martain,

v.

R. C. CATES & L. L. CATES & D. ANDREWS, Residents in Trade at Tupelo, Lee County, State of Mississippi, under the Firm Name of Andrews, Cates & Co., & at Kossuth, Alcorn County, said State, under the Firm Name of Cates, Andrews & Co., Citizens of said State of Mississippi, and F. G. Smith & J. K. Herman, Assignees of said Merchants & Citizens, of Alcorn Co., said State of Mississippi.

To the Hon. Baxter McFarland, chancellor of the 1st chancery district of said State, sole presiding at Tupelo, for the county of Lee:

Complainants would state that said R. C. & L. L. Cates & said D. Andrews, as such merchants trading as aforesaid, are indebted to complainants in about the sum of seven thousand seven hundred & fifty dollars past due and unpaid, & said defendants fail and refuse to pay the same, and complainants, according to the terms of the bill filed in this cause by Allen, West & Bush, now appear & make themselves parties in said suit & pray the approval of the court thereof & make said bill a part hereof so far as it be neces-
43 sary & proper, & they aver & charge all the allegations of fraud, covin, delay, & collusion & assignment contained in said bill may be taken as a part thereof, & they charge that said assignment is fraudulent & void in fact & law, and they pray all such additional process, rules, orders, & injunctions as may be needful in the premises; and as in duty bound they will ever pray.

HILL, FONTAIN & CO.,
Complainants.

J. A. BLAIR,
Solicitor for Compl'ts.

Filed Dec. 9th, 1886, at 9 o'clock a. m.
W. C. BESSONETT, *Clerk.*

44 THE STATE OF MISSISSIPPI,
Lee County.

Chancery Court.

To the sheriff of Lee county, Greeting:

You are hereby commanded to summon L. L. Cates, F. G. Smith,

and D. Andrews, if to be found in your county, to be and personally appear before the chancery court of Lee county, at the court-house of said county, in the town of Tupelo, on the first Monday of May, 1887, then and there to plead, answer, or demur to petition of Hill, Fontaine & Co., this day filed in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 1155, and show cause, if any, why the said Hill, Fontaine & Co. should not be made parties complainant in said bill.

Herein fail not, and have you then and there this writ.

Issued under my hand and seal of said court at office, in Tupelo, the 9th day of Dec'r, 1886.

W. C. BESSONETT, *Clerk.*

Executed this process by delivering to L. L. Cates, F. G. Smith, and D. Andrews, in person, each a true copy hereof this Dec'r 9th, 1886.

W. B. LANG, *Sh'ff.*
P. A. GREEN, *D. S.*

45 THE STATE OF MISSISSIPPI, }
Lee County. }

Chancery Court.

To the sheriff of Alcorn county, Greeting:

You are hereby commanded to summon R. R. Cates, J. K. Hannon, if to be found in your county, to be and personally appear before the chancery court of Lee county, at the court-house of said county, in the town of Tupelo, on the first Monday of May, 1887, then and there to plead, answer, or demur to petition of Hill, Fontaine & Co., this day filed in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 1155, in the chancery court of Lee county, Miss., and show cause, if any, why the said Hill, Fontaine & Co. should — be made parties complainant in said bill.

Herein fail not, and have you then and there this writ.

Issued under my hand and seal of said court, at office, in Tupelo, the 9th day of December, 1886.

W. C. BESSONETT, *Clerk.*

Lee Chancery Court, May Term, 1887.

Received the 10 day of Dec., 1886, at 10 o'clock a. m.

Executed by personal service and by handing a true copy of the within writ to R. C. Cates Dec. 10th, at 1.53 o'clock p. m., & J. K. Herman Dec. 11th, 1886, the defendant-, this — day of —— 188–.

B. F. WILLIAMS, *Sheriff,*
By BOONE WILLIAMS, *D. S.*

46 STATE OF MISSISSIPPI,
Lee County.

Chancery Court, May Term, 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.*

A. F. SHAPLEY & CANTWELL HARDWARE COMPANY, a Corporation under the Laws of the State of Missouri & Citizens of Missouri, Doing a Mercantile Business in said State, in the City of St. Louis,

vs.

R. C. CATES, L. L. CATES, & D. ANDREWS, Merchants in Trade at Tupelo, Lee County, Mississippi, under the Firm Name & Style of Andrews, Cates & Co., & at Kossuth, Alcorn County, Mississippi, under the Firm Name of Cates, Andrews & Co., Citizens of the State of Mississippi, and F. G. Smith & J. K. Herman, Assignees of said Merchants & Citizens, of Alcorn County, Mississippi.

To the Hon. Baxter McFarland, chancellor of the first chancery district of Mississippi, sitting at the court-house, in the town of Tupelo, and sole presiding for Lee county:

Complainants would state that said R. C. Cates & L. L. Cates & said D. Andrews, as such merchants trading as aforesaid, are indebted to complainants in about the sum of three hundred and thirty-five dollars, now due, & said defendants fail & refuse to pay the same, and complainants, according to the terms of the bill filed in this cause by Allen, West & Bush, now appear and make themselves parties in said suit & pray the approval of the court & make said bill a part hereof so far as it may be necessary & proper,
47 & said complainants aver and charge all the allegations of fraud, covin, delay, & collusion & assignment contained in said bill & pray that the assignment referred — in said bill may be taken as a part thereof, & they charge that said assignment is fraudulent & void in fact & in law, and complainants charge that there is also on the farm of J. M. Allen, near the town of Tupelo, a bay-mare colt 3 years old, & that there is now in the possession of Bunt Taylor, in said county of Lee, one blaze-faced sorrel mare, all of which said property is the property of said Andrews, Cates & Co., upon which said property complainant- claim a lien from the date of the filing of this petition, & complainants pray that the same may be subjected to the payment of their debt, & should this be more than a sufficiency for this purpose that the balance may be applied to the payment of the debts of such creditors as may be entitled to same under the original bill in this cause, and that writs of sequestration for the seizure of said property issue, & complainants pray for the issuance of all such additional process, rules, orders, & injunc-

tions as may be needful in the premises; and as in duty bound complainant will ever pray, &c.

A. F. SHAPELEY &
CANTWELL HARDWARE CO.,
Complainants.

S. M. TAYLOR, *Solicitor.*

Filed Dec. 9th, 1886, at 7½ o'clock p. m.
W. C. BESSONETT, *Clerk.*

48 *Affidavit.*

STATE OF MISSISSIPPI, }
Lee County. }

Personally this day appeared before the undersigned, clerk of the chancery court of said county, J. W. Keyes, agent of the A. F. Shapleigh — Cantwell Hardware Company, complainants in a certain cause now pending in the chancery court of Lee county, said State, in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 1155, who makes oath that there is now on the farm of J. M. Allen, near the town of Tupelo, a bay-mare colt 3 years old, and that there is now in the possession of Burt Taylor, in Lee county, Miss., 1 blazed-face sorrel mare, property of Andrews, Cates & Co., & that he has good cause to believe and does believe that there is danger of the removal of said property beyond the limits of the State of Mississippi or of its concealment in this State so as to be beyond the process of this court or of its transfer so as to defeat *to defeat* the rights of complainants, and that such removal, transfer, or concealment is about to occur; said *affidavit* further says that he is informed & believes that said property is of the value of one hundred dollars.

J. W. KEYES.

Sworn to and subscribed before me this 9 day of December, 1886.
W. C. BESSONETT,
Ch'c'y Clerk.

49 *Sequestration Bond of Sharbley et al.*

Know all men by these presents that we. A. F. Shapligh & Cantwell Hardware Company, as principals, and J. W. Keys, J. Q. Robbins, & S. M. Taylor, as surety, are held and firmly bound unto Andrews, Cates & Co., composed of R. C. Cates, L. L. Cates, & D. Andrews, in the sum of one hundred dollars, & for the payment of which, well and truly to be made, we bind ourselves & legal representatives, jointly & severally, firmly by these presents.

Signed with our names this 9th day of Dec., 1886.

The condition of this obligation is such that whereas said A. F. Shapligh & Cantwell Hardware Co. have this day prayed, according to section 1854 of the Code of 1880, in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.* in the chancery court of Lee county, Mississippi, for a writ of sequestration for the seizure of a certain blazed

face mare now in the possession of Burt Taylor in Lee county, & also for a certain bay mare colt about 3 years old now on the farm of J. M. Allen, in Lee Co., near Tupelo:

Now, therefore, if said A. F. Shapligh & Cantwell Hardware Co. shall pay said Andrews, Cates & Co. all such damages as they shall sustain by reason of the wrongful seizure of said property under said writ, then this obligation to be void, but otherwise to remain in full force.

A. F. SHAPLEIGH & CANTWELL HDW. CO.,
By J. W. KEYES, *Ag't.*
J. W. KEYS.
S. M. TAYLOR.
J. Q. ROBINS.

I approve the foregoing bond and sureties this the 9th day of Dec'r, 1886.

W. C. BESSONETT,
Ch'c'y Clerk.

50 *Sequestration.*

LEE COUNTY:

Chancery Court, May Term, 1887.

The State of Mississippi to the sheriff or any lawful officer of Lee county, Greeting:

Whereas in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 1155, now pending in the chancery court of Lee county, Mississippi, the necessary affidavit & bond having been filed in my office, pursuant to section 1854 of the Code of 1880, with reference to the sequestration of property, & in said affidavit it is stated that on the farm of J. M. Allen, near the town of Tupelo, in said county, is a bay mare colt about 3 years old, & that there is now in the possession of Burt Taylor, in said county, 1 blazed-faced sorrel mare, property of said Andrews, Cates & Co., & that there is good cause to believe & does believe that there is danger of the removal of said property beyond the limits of the State or of its concealment in this State, so as to be beyond the process of this court, or of its transfer, so as to defeat the rights of complainants: This is therefore to command you to seize and take into your possession said mare and colt, if to be found in your county, and to hold the same until the further order of the hon. chancery court of said county or until the said defendants shall enter into bond, with good security, payable to complainants, in double the value of said property, conditioned according to law, to have the property forthcoming to abide the decree of the court in this cause at the May term, 1887; and — you then there this writ.

This December 9th, 1886.

W. C. BESSONETT,
Chancery Clerk.

51 J. H. ALLEN *et al.* } Sequestration.
vs.
R. C. CATES *et al.* }

Received Dec. the 9th, 1886.

W. B. LONG, *Sh'ff*,
By P. A. GREEN, *D. S.*

Executed this process this day by levying same on and taking into my possession one bay filly about 3 years, valued by me at the sum of thirty-five dollars ($35.00), levied on as the property of the defendants Andrews, Cates & Co., to satisfy this writ and all costs levied this Dec'r 10th, 1886, at 9 o'clock a. m.

W. B. LONG, *Sh'ff*,
By P. A. GREEN, *D. Sh'ff.*

Levied on one bay filly at 9 o'clock a. m., Dec'r 10th, 1886, valued at $35.00.

52 *Petition of J. & A. Simpkinson & Co.*

STATE OF MISSISSIPPI, }
Lee County. }

Chancery Court, May Term, 1886.

J. H. ALLEN *et al.*
v.
CATES, ANDREWS & CO. & ANDREWS, CATES & CO. & Others. }

To the Hon. Baxter McFarland, chancellor:

J. & A. Simpkinson & Co., merchants at Cincinnati, State of Ohio, & citizens thereof, would state that the aforesaid R. C. & L. L. Cates & D. Andrews, defendants in the above cause, are indebted to these complainants in about the sum of twenty-five hundred dollars, & that the same is due & they fail & refuse to pay the same. Complainants allege & claim all the benefits, privi*l*eges, & lien of the charges made & contained in the original bill in this case, & hereby, so far as they can, make themselves parties to said bill & accept the terms thereof & pray that their order may be approved by the court, and that all proper remedies, liens, rules, & orders may be given them; and, as in duty bound, they will pray, &c.

J. & A. SIMKINSON & CO., *Compl'ts.*

J. A. BLAIR,
Att'y for Compl'ts.

Filed Dec'r 9th, 1886, at 7.40 p. m.

W. C. BESSONETT, *Clerk.*

53 STATE OF MISSISSIPPI, *Lee County:*

Chancery Court, May Term, 1886.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.*

BAMBURGE, BLOOM & CO., a Commercial Firm Composed of N. Bloom, Levi Bamburger, Jacob Bamburger, Julius Bamburger, & Levi Bloom, Citizens and Doing Business in the City of Louisville, in the State of Kentucky,

vs.

R. C. CATES, L. L. CATES, & D. ANDREWS, Merchants in Trade at Tupelo, in Lee County, Mississippi, under the Firm Name & Style of Andrews, Cates & Co., and at Kossuth, Alcorn County, Mississippi, under the Firm Name & Style of Cates, Andrews & Co., Citizens of the State of Mississippi, and F. G. Smith & J. K. Herman, Assignees of said Merchants and Citizens of Alcorn County, Mississippi.

To the Honl. Baxter McFarland, chancellor of the 1st chancery dist. of Mississippi, sitting at the court-house, in the town of Tupelo, & presiding for Lee county:

Complainants would state that said R. C. Cates, L. L. Cates, & said D. Andrews, as such merchants, trading as aforesaid, are indebted to complainants—that is, the said Andrews, Cates & Co. are indebted in the sum of one thousand & twenty-nine & $\frac{21}{100}$ dollars, & the said Cates, Andrews & Co. in the sum of eight hundred & seventy-five dollars, due & to become due, & that the said defend-

54 ants fail & refuse to pay the same, and said complainants, according to the terms of the bill filed in this cause by Allen, West — Bush, now appear and make themselves parties in said suit and pray the approval of the court and make said bill a part hereof so far as it may be necessary & proper, and said complainants aver & charge all the allegations of fraud, covin, delay, & collusion, & assignments contained in said bill may be taken as a part thereof, & they charge that said assignment is fraudulent & void in fact & in law, and said complainants pray for the issuance of all such additional process, rules, orders, & injunctions as may be needful in the premises; and, as in duty bound, complainants will ever pray, &c.

BAMBURGER, BLOOM & CO., *Compl'ts.*

S. M. TAYLOR, *Sol.*

Filed Dec. 9th, 1886, at 7.40 p. m.

W. C. BESSONETT, *Clerk.*

55 STATE OF MISSISSIPPI, }
Lee County. }

Chancery Court, Dec. 14th, 1886.

J. H. ALLEN *et al.*
v.
CATES & ANDREWS & ANDREWS, CATES & Co. and Others.

To the Hon. Baxter McFarland, chancellor of the 1st chancery district of said State:

The Bell Factory Company of Huntsville, Alabama, complainants, would state the said Cates & Andrews, doing business at Kossuth, in Alcorn county, & Andrews, Cates & Co., of Lee county, all in said *said* State, are indebted to complainants in the sum of about one hundred and fifty-seven $\frac{75}{100}$ dollars to each of said firms, and that the same is due & unpaid, & the said defendants refuse to pay the same; therefore complainants pray to be made parties to the original bill in the above cause, & that they — allowed all the benefits & liens accruing therefrom, and complainants reiterate all the allegations & charges thereof; & as in duty bound they will ever pray.

BELL FACTORY CO.,
Complainants.

Filed Dec. 14, 1886.

W. C. BESSONETT, *Clerk.*

56 HUNTSVILLE, ALA., *Nov. 8th*, 1886.

Mess. Andrews, Cates & Co., Tupelo, Miss., bought of the Bell factory, manufacturers of cotton and woolen goods expressly for the southern trade.

Terms, 60 days, less 2% 10 days. Please pay charges on remittances.

3 bales $\frac{4}{4}$ sheeting, 3,000 @ $5\frac{1}{4}$	157 50
Drayage	25
	$157 75

STATE OF ALABAMA, }
Madison County. }

Personally appeared before me, Alfred Moore, notary public in & for said county, O. B. Patton, pres't of the Bell Factory Company, who, being duly sworn, certified that the above ac. is correct and unpaid to the best of his knowledge & belief.

ALFRED MOORE,
Notary Public.

HUNTSVILLE, ALA., *Nov. 8th*, 1886.

Mess. Cates and Andrews, Kossuth, Miss., bought of the Bell factory, manufacturer of cotton and woolen goods expressly for the southern trade.

Terms, 60 days, less 2% 10 days. Please pay charges on remittances.

3 bales $\frac{4}{4}$ sheeting, 3,000 @ $5\frac{1}{4}$	157 50
Drayage	25
	157 75

STATE OF ALABAMA, *Madison County.*

Personally appeared before me, Alfred Moore, notary public in & for said county, O. B. Patton, pres't of the Bell Factory Co., who, being duly sworn, states that the above ac. is correct and unpaid to the best of his knowledge and belief.

ALFRED MOORE,
Notary Public.

57 THE STATE OF MISSISSIPPI, *Lee County.*

Chancery Court. In Vac-tion, Dec. 15th, 1886.

J. H. ALLEN *et al.* v. R. C. CATES *et al.* } 1155. Bond for Removal to U. S. Court.

To the honorable chancery court of Lee county:

Your petitioners, J. H. Allen, a resident citizen of the State of Louisiana; J. C. Bush, a resident citizen of the State of Alabama; T. H. West, a resident citizen of the State of Missouri, composing the firm of Allen, West & Bush, of New Orleans, La.; Napoleon Hill, J. H. Martin, & Noland Fontaine, resident citizens of the State of Tennessee, and Jerome ——, a resident citizen of the State of Missouri, composing the firm of Hill, Fontaine & Co., of Memphis, Tenn.; E. R. Richardson, Jas. B. Richardson, & J. R. Mason, resident citizens of the State of Tennessee and composing the firm of Richardson, Mason & Co., of Nashville, in said State; The Memphis Saddlery Company, incorporated under the laws of the State of Tennessee and having its domicile in the city of Memphis, in said State; A. and J. Trowenstine and —— ——, resident citizens of the State of Ohio, composing the firm of A. & J. Trowenstine & Co., of the city of Cincinnati, in said State of Ohio; The Bell Factory, a corporation incorporated under the laws of the State of Alabama and having for its domicile the city of Huntsville, in said State of Alabama; The A. F. Spapligh & Cantwell Hardware Company, a corporation incorporated under the laws of the State of Missouri and having

its domicile in the city of St. Louis, in said State of Missouri;
58 J. & A. Simpkinson and —— ——, resident citizens of the State — Ohio and composing the firm of J. & A. Simpkinson & Co., of Cincinnati, in said State of Ohio, and N. Bloom, Levi Bamburger, Jacob Bamburger, Julius Bamburger, and Levi Bloom, resident citizens of the — Kentucky and composing the firm of Bamburger, Bloom & Co., of Louisville, in said State of Kentucky, would respectfully represent and show unto the court that they are complainants in a bill filed in the chancery court of Lee county *which* case of J. H. Allen *et al. v.* R. C. Cates *et al.*, No. 1155, and that there is now pending in said chancery court a controversy between said complainants and R. C. Cates, D. Andrews, L. L. Cates, J. K. Herman, & F. G. Smith, defendants therein, all citizens of said State of Mississippi; that the amount in controversy in said suit largely exceeds five hundred dollars, exclusive of costs and interest; that all of complainants in said cause are non-residents of this State; that all the defendants therein reside in Alcorn and Lee counties, being in the eastern division of the northern district of the State of Mississippi. Petitioners herewith tender a good and sufficient bond in the penal sum of five hundred dollars, conditions according to law.

Wherefore, in consideration of premises, petitioners pray that said cause be removed from the chancery court of Lee county to the United States circuit court for the eastern division of the northern district of the State of Mississippi, to be held at Aberdeen, in Monroe county, on the 1st Monday in April, 1887.

And petitioners will ever pray, &c.

CLARK & CLARK &
J. Q. ROBINS,
Sol's for Petitioners.

J. A. BLAIR.
S. M. TAYLOR.

59 *Bond for Removal — U. S. Court.*

Know all men by these presents that we, J. H. Allen, J. C. Bush, T. H. West, Napoleon Hill, J. H. Martin, & Noland Fontaine, Jerome Hill, E. R. Richardson, J. B. Richardson, J. R. Mason, The Memphis Saddlery Co., A. Trowenstine, J. Trowenstine, The Bell Factory, The A. F. Shapleigh & Cantwell Hardware Co., J. Simpkinson, A. Simpkinson, N. Bloom, Levi Bamburger, Julius Bamburger, and Levi Bloom, as principals, and J. Q. Robins, J. A. Blair, J. M. Allen, and J. L. Finley, as sureties, are held *are held* and firmly bound unto R. C. Cates, D. Andrews, L. L. Cates, F. G. Smith, and J. K. Herman in the penal sum of five hundred dollars, well and truly to pay which we bind ourselves, our heirs, and our legal representatives. The condition of the above obligation is — that whereas in a cause lately pending in the chancery court of Lee county, wherein the above-bounden principals are complainants and the said R. C. Cates, D. Andrews, L. L. Cates, F. G. Smith, & J. K. Herman are defendants, the said above-bounden — have prayed the removal of said cause

to the circuit court of the United States for the eastern division of the northern district of the State of Mississippi, to be held at Aberdeen, in Monroe county, in said State of Mississippi: Now, if the complainants shall have filed in the clerk's office at Aberdeen of said United States court a true transcript of the proceedings in said chancery court on or before the 1st Monday of April, 1887, this obligation to be null and void; otherwise to remain in full force and effect.

60 This December 15th, 1886.

J. H. ALLEN,
By J. Q. ROBINS,
Ag't & Att'y.

J. C. BUSH,
By J. Q. ROBINS,
Ag't & Att'y.

T. H. WEST,
By J. Q. ROBINS,
Ag't & Att'y.

J. R. RICHARDSON,
By J. Q. ROBINS,
Ag't & Att'y.

J. B. RICHARDSON,
By J. Q. ROBINS,
Ag't & Att'y.

J. R. MASON,
By J. Q. ROBINS,
Ag't & Att'y.

THE MEMPHIS SADDLERY CO.,
By J. Q. ROBINS,
Ag't & Att'y.

A. TROUSTINE,
By J. A. BLAIR,
Ag't & Att'y.

J. TROWENSTINE,
By J. A. BLAIR,
Ag't & Att'y.

THE A. F. SHAPLEY CATWELL HARDWARE CO.,
By S. M. TAYLOR,
Ag't & Att'y.

J. Q. ROBINS.
J. M. ALLEN.

J. L. FINLEY.

NAPOLEON HILL,
By J. A. BLAIR,
Ag't & Att'y.

J. H. MARTIN,
By J. A. BLAIR,
Ag't & Att'y.

NOLAND FONTAINE,
By J. A. BLAIR,
Ag't & Att'y.

JEROME HILL,
By J. A. BLAIR,
Ag't & Att'y.

J. SIMPKINSON,
By J. A. BLAIR,
Ag't & Att'y.

A. SIMPKINSON,
By J. A. BLAIR,
Ag't & Att'y.

N. BLOOM,
By S. M. TAYLOR,
Ag't & Att'y.

LEVI BAMBURGER &
By S. M. TAYLOR,
Ag't & Att'y.

JACOB BAMBURGER,
By S. M. TAYLOR,
Ag't & Att'y.

JULIUS BAMBER,
By S. M. TAYLOR,
Ag't & Att'y.

LEVI BLOOM,
By S. M. TAYLOR,
Ag't & Att'y.

J. A. BLAIR.

I approve the above bond and sureties this Dec'r 15th, 1886.

W. C. BESSONETT, *Clerk.*

61 THE STATE OF MISS., }
Lee County. }

I, W. C. Bessonett, chancery clerk in and for said county, do

hereby certify that the foregoing pages contain a true and complete copy of all the papers and proceedings had and now on file — the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 1155, in the chancery court of Lee county, Miss.

Witness my hand and official seal, at office, in Tupelo, this the 20th day of Dec'r, 1886.

W. C. BESSONETT,
Ch'c'y Clerk.

Chancery court cost	$95 45
Cost in making transcript	$23 25
1 certificate	50
	$23 75

62 *Petition of the Tishomingo Savings Institute to Be Made Party.*

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } No. 41.

The Tishomingo Savings Institute, a corporation doing a general banking business at Corinth, in the State of Mississippi, respectfully shows to the court that it is a preferred creditor in the deed of assignment made by defendants in this cause, and that it is largely interested in the result of this suit, and, being so interested, it prays that it may be admitted as a party in order that it may defend and protect its interest herein and make such defense as it may think proper; and in duty bound will ever pray, &c.

TISH. SAV'S INST.,
By A. H. TAYLOR, *President.*

W. M. INGE &
YOUNG & BARR,
Solicitors.

63 *Order Admitting Tish. Sav's Ins. as Party.*

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } No. 41.

This day came on to be heard the petition of the Tishomingo Savings Institute to be admitted as a party to this suit and be permitted to defend its interest in the matter in litigation in this suit, and, it thereupon being made to appear to the court that it is largely interested in the subject-matter of this suit and the result thereof, it is therefore considered by the court that said petition be, and the same is hereby, granted, and said Tishomingo Savings Institution be admitted as a party to this suit and be permitted to take such legal steps to protect its interest and make such defense to this suit as it may deem proper within thirty days as of this term.

Signed and ordered to be entered as the decree of this court this April 15th, A. D. 1887.

R. A. HILL,
Dist. Judge, Eastern Div., Northern Dist. of Mississippi.

64 *Demurrer to Bill.*

UNITED STATES OF AMERICA,
State of Mississippi & the Eastern Division of the Northern District.

United States Circuit Court, Chancery Side, April Term, 1887.

J. H. ALLEN *et al.*, Complainants,
vs.
R. C. CATES *et al.*, Defendants.

The demurrer of R. C. Cates *et al.* to the bill exhibited against them by J. H. Allen *et al.*

The said defendants demurs to said bill and prays the judgment of the court if they shall *move* any further answer thereto, and they show the following causes of demurrer to said bill, to wit:

1st. There is no equity upon the face of the bill.

2d. The claims of complainants have not been reduced to judgment; they have no lien and are not entitled to file the bill under the law.

3rd. The Tishomingo Savings Institution and S. W. Gardner, preferred creditors in the deed of assignment, are not made parties to said bill, and they are necessary parties thereto.

T. D. YOUNG &
W. M. INGE,
Sol's for Defendants.

65 UNITED STATES OF AMERICA,
State of Mississippi & the Eastern Division of the Northern District Thereof.

This day personally appeared before me, C. W. McCord, United States commissioner for the eastern division of the northern district of the State of Mississippi, W. M. Inge, the solicitor who filed the foregoing demurrer, who, being by me duly sworn, says, under oath, that this demurrer is interposed in good faith and not for delay.

W. M. INGE.

Sworn to & subscribed before me this the 13th day of April, 1887.

C. W. McCORD,
U. S. Commissioner.

Order.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

Came on to be heard the demurrer filed herein to the bill, and the court heard and considered the same. It is considered and ordered

by the court that said demurrer be, and the same is hereby, overruled, and the defendants are hereby required to answer said bill within thirty days from this date as of this term.

April 14, 1887.

66 *Answer of R. C. Cates, L. L. Cates, and D. Andrews.*

UNITED STATES OF AMERICA,
E. Div., Northern District of the State of Mississippi.

U. S. Chancery Court, April Term, 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.*

The defendants, R. C. Cates, Luke L. Cates, and D. Andrews, make this their joint answer to the bill of complaint herein filed against them in the above-styled cause, and, reserving to themselves the benefit of all objection or exception on account of any defect or insufficiency of said bill, for answer thereto say:

Respondents admit that complainants were and had been engaged in the business described in their bill of complaint as therein stated, and that respondents were and had been engaged in business as described and set forth in said bill of complaint up to the — day of ——, 1886, &c.; but respondents deny that during the general course of business and trade respondents became indebted to complainants in the sum of about sixteen thousand dollars ($16,000.00) or near so large a sum, but respondents admit that while engaged

67 in business as aforesaid the- had a considerable amount of dealings with complainants and became indebted to them in a large sum, the amount of which may be seen by reference to respondents' schedule of debts mentioned in the assignment made by respondents for the benefit of their creditors on the 7th of December, 1886, which is made exhibit to the bill of complaint herein.

Respondents, further answering, most emphatically deny that on or about the 7th day of December, 1886, they being largely indebted to divers persons in divers sums, made or attempted to make a fraudulent, covinous, and collusive transfer and assignment of all their property, both real and personal, except such as was exempt from seizure or sale under executions and attachments, to J. K. Herman and F. G. Smith, and by said fraudulent and pretended transfer respondents attempted to transfer, set over, convey, assign, and release all of their effects to said Herman and Smith, including the real estate belonging to the firm of Andrews, Cates & Co., to each individual member of said firm, and to Cates & Andrews, a mercantile firm at Kossuth, in Alcorn county, wherein the said R. C. Cates and D. Andrews were partners.

And respondents, answering further to the contrary, state and

68 destinctly allege and charge the fact to be that the assignment made by respondents to said J. K. Herman and F. G. Smith, which is referred to in the bill of complaint as fraudu-

lent, covinous, and collusive, was made and executed by respondents in the utmost good faith and for the purpose of applying most speedily and effectually all the effects of respondents to payment of respondents' debts and for no other or different purpose whatever.

And respondents deny that said assignment was made without any valuable consideration, and reiterate that the consideration therefor was the payment of respondents' debts to the full extent of their assets, and respondents most emphatically deny that said assignment was made with covinous, collusive, and fraudulent intent of delaying, hindering, and defrauding complainants and other creditors of respondents of the collection of their debts, suits, actions, accounts, claims, notes, and demands.

Respondents, further answering, deny that said transfer and assignment is either fraudulent in law and null and void as to complainants and other creditors of respondents or fraudulent in fact and void as to complainants and other creditors of respond-
69 ents, and that if said assignment be permitted to stand it will delay, hinder, and defraud complainants and other creditors of the collection of their just suits, actions, notes, accounts, claims, and demands against these respondents; upon the contrary, respondents state and charge the fact to be that if full effect should be given to said assignment the effects of respondents would be most faithfully applied and best appropriated to respondents' debts.

Respondents admit that the said F. G. Smith and J. K. Herman, as assignees for the benefit of these respondents' creditors, claim title to and possession of the property, real and personal, described in said assignment, embracing that mentioned in the bill of complaint; but respondents deny that the title of the said J. K. Herman and F. G. Smith, assignees, is fraudulent and void, and respondents allege that the title of the said Herman and Smith, as assignees, by virtue of said assignment, obtained a good and perfect title to all the property and effects described in said deed of assignment as fully as such title was vested in respondents at the date of its execution, and respondents deny that said title to said property or any part thereof remains in these respondents.

70 Respondents, further answering, admit that the said F. G. Smith was in charge of the stock of goods, notes, & accounts described in the bill as located in Tupelo, but den*ies* that by reason of insolvency of said Smith that if he is permitted to remain in possession of said goods there is danger that the same will be lost to complainants and the other creditors of respondents, and that irrep*a*irable injury will result to your complainants, and respondents deny that the claim of the said F. G. Smith is fraudulent, null, and void and made with intent to delay, hinder, and defraud complainants and other creditors of respondents, and respondents allege the fact to be that while the said F. G. Smith may not own property enough or have money enough in his own right to equal in value the amount of goods or accounts in his possession as alleged in the bill of complaint, yet the said Smith is an honorable, trustworthy, honest, and capable business man, and respondents believe he could easily give bond required to guarantee safe management of said

business and secure complainants against any injury whatever, and he was willing to execute said bond if required so to do. Respondents deny that any of the effects embraced in said deed of
71 assignment made by respondents to said Smith and Herman or the title to the same remained in respondents or is now in respondents by reason of anything alleged in said bill of complaint; but respondents aver that the title to all of said effects is valid and perfect in said assignees, Smith and Herman, to the same degree and extent that said title existed in respondents, or respondents were able to convey the same at the date of the execution of said deed of assignment.

And now, having fully answered, respondents pray to be hence dismissed with their reasonable costs, &c.

T. D. YOUNG & W. M. INGE,
Sol. for Respondents.

72 UNITED STATES OF AMERICA,
State of Mississippi.

Personally appeared before me, C. W. McCord, United States commissioner for the eastern division of the northern district of the State of Mississippi, R. C. Cates, a member of the firm of Cates & Andrews and Andrews, Cates & Co., and defendant in the foregoing answer, who, being by me first duly sworn, deposeth and says, under oath, that he is one of the respondents to the foregoing answer and knows the contents of said answer, and that the allegations therein contained as of his own knowledge are true and those stated upon information and belief he verily believes to be true.

R. C. CATES.

Sworn and subscribed before me this the 13th day of April, 1887.

C. W. McCORD,
U. S. Commissioner.

73 *Answer of Herman & Smith.*

UNITED STATES OF AMERICA,
State of Mississippi, Eastern Div., Northern District Thereof.

District Court. In Chancery. April Term, '87.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.*

The defendants F. G. Smith and J. K. Herman, by this their joint answer to the bill of complaint herein filed against them and others, saving and reserving to themselves all benefit of exception to the errors, defects, and insufficiencies of said bill, for answer thereto to say:

Respondents and each of them have examined and know the contents of the answer of their codefendants R. C. Cates, L. L. Cates, and D. Andrews, and these respondents in so far as may be adopt the

answer of their codefendants and ask that the same may be considered as the answer of these respondents.

And these respondents, further answering, deny all and each allegation of the bill of complaint charging fraud in the execution of said assignment so far as these respondents are concerned or know or believe, and upon the contrary these respondents believe
74 and allege the fact to be that said deed of assignment was executed and delivered to these respondents by their codefendants in the utmost good faith and without any fraudulent purpose whatsoever so far as these respondents have any knowledge or belief whatsoever.

And, now having fully answered, these respondents pray to be hence dismissed with their reasonable costs, &c.

T. D. YOUNG &
W. M. INGE,
Sol's for Respondents.

U. S. OF AMERICA, STATE OF MISSISSIPPI,
Eastern Division of the Northern District Thereof.

Personally appeared before me, C. W. McCord, United States com. for E. div., N. dist., State Miss., J. K. Herman, who, being by me first duly sworn, deposes and says that he is one of the respondents to the foregoing answer and knows the contents thereof, and that the allegations therein contained are true, except such as are stated as upon information and belief, and as to those that *they* believe them to be true.

J. K. HERMAN.

Sworn to and subscribed before me this the 13 day of April, A. D. 1887.

C. W. McCORD,
U. S. Commissioner.

Answer of the Tishoming- Savings Institution.

75 UNITED STATES OF AMERICA:

Eastern Division of the District Court for the Northern District of the State of Mississippi, sitting at Aberdeen. In Chancery in said Court. May Term, A. D. 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

The Tishomingo Savings Institution, a corporation doing a general banking business at Corinth, in the State of Mississippi and in the county of Alcorn, having been admitted by order of this court as a party defendant in said suit, reserving to itself the benefit of all objections or exceptions to the insufficiency of said original bill & amendments thereto and the many defects and inaccuracies thereof,

for answer thereto or so much thereof as it is advised that it is necessary or material for it to answer, says—

That it has examined and know- the contents of the answer filed in this suit by its codefendants, R. C. Cates, L. L. Cates, and D. Andrews, and of J. K. Herman, and F. G. Smith, and this respondent is informed and believes that all of the allegations and statements of facts made in each of said answers are true as
76 therein stated, and said answers are hereby adopted as part of its answer in this cause, and prays that the same may be considered as part of this respondent's answer thereto; and this respondents further aver- that at the time of the assignment made by said defendants, Andrews, Cates & Co. and Cates & Andrews, referred to in complainants' bill, the said Andrews, Cates & Co. were indebted to this respondent for divers large sums of money, amounting in the aggregate to about ten or eleven thousand dollars, for which sums of money said defendants had executed and delivered to respondent their promissory notes as follows, to wit:

One for five thousand dollars, of date Feb'y 4th, 1885, and payable on December 1st, after its date, and the same to bear interest from its date at 10% per annum, and made payable at Corinth, Miss., and said note was signed "Luke Cates & Co.," "Cates & Andrews," and endorsed across the face of it by each of the individuals of said firm, to wit: "Luke Cates, D. Andrews, R. C. Cates;" that upon said note said defendants paid on Nov. 16, '85, the sum of eleven hundred dollars, and on Nov. 14, '86, the sum of nine hundred dollars; also their note for four thousand dollars, dated Jan'y 18, '86, and made payable on November 1st after its
77 date and bearing interest at ten per cent. per annum from its date, and said note is signed by R. C. Cates, D. Andrews, and Luke Cates, the individual members of said firm of Andrews, Cates & Co.; also their other note for two hundred dollars, dated October 6th, A. D. 1886, and payable one day after its date, and the same bears one per cent. interest per month from its date; said — is signed "Andrews, Cates & Co.;" also their other promissory note for two hundred & fifty dollars, dated November the 30th, A. D. 1886, and payable one day after its date, with one per cent. interest per month, and signed "Andrews, Cates & Co." & "D. Andrews;" also their other promissory note for six hundred and forty-three & $\frac{37}{100}$ dollars, dated Nov. 30, A. D. 1886, & payable one day after its date and bearing ten per cent. per annum interest from its date, & said last-mentioned note is signed "Andrews, Cates & Co.;" also one note for the sum of $400.00, dated Tupelo, Miss., Nov. 1st, 1884, due on 15th of November after date, payable to the order of Col. A. H. Taylor, with 10% int. from date, signed Luke Cates & Co., and written across its face D. Andrews, & credited on back with $472.44, p'd Dec. 6, '86; & respondent avers that said money was due to your respondent, although made payable to Col. A. H. Taylor; and this respondent avers that said several promissory notes are joint and several and were given by said defendants to your respondent for money advanced to the said Andrews, Cates & Co. for the pur-
78 pose of carrying on the mercantile transactions of said firm,

and your respondent is informed and believes and so charges the fact to be that all of said moneys were used by said firm of Andrews, Cates & Co. in their mercantile business, & that no part of said several sums of money has been paid respondent excepting the sums of eleven hundred & nine hundred dollars credited as aforesaid; that the firm of Andrews, Cates & Co. was composed of D. Andrews, Luke Cates, & R. C. Cates, and the firm of Cates & Andrews *were* compose- of R. C. Cates & D. Andrews, who were the D. Andrews and R. C. Cates of the firm of Andrews, Cates & Co.; that the individual names signed to the note of four thousand dollars as aforesaid are the individual members of the firm of Andrews, Cates & Co., and were all the persons that composed said firm. Your respondent further avers that in the assignment made by said Andrews, Cates & Co. and Cates & Andrews it is made a preferred creditor to the amount of said indebtedness due it by said Andrews, Cates & Co.; that in said assignment the assignees mentioned in same are directed to pay in full, with the interest thereon, all of said several sums of money mentioned in this answer and evidenced as aforesaid by said several promissory notes as due and owing
79 to respondent by said defendants after paying two other prior preference claims therein specified; and your respondent avers that it in good faith acquiessed in and accepted said assignment for the purposes of the payment of its said debts; that it is informed and believes, and so charges the fact to be, that said assignment was made by said parties in the utmost good faith and with the honest purpose and intention of paying as far as possible all of their just debts; that this respondent has no knowledge either directly or indirectly, and had not at the time said assignment was made by said parties, of any fraud or fraudulent intent on the part of said grantors in executing & making same. Copies of the notes mentioned in this answer are filed herewith & prayed to be taken as part of respondent's answer, & the originals will be produced at the hearing if desired.

Having fully answered, respondent prays to be hence discharged with *his* reasonable costs, &c.

YOUNG & BARR AND
W. M. INGE,
Solicitors for Def'ts.

80 *Copies of the Notes in Answer.*

$5,000.00. CORINTH, MISS., *Feb'y* 4, '85.

On December first after date we and each of us promise to pay the Tishoming- Savings Institution the sum of five thousand dollars, with interest from date until paid at the rate of ten per cent. per annum, for value received, payable at the Tishomingo Savings Institution, in Corinth, Mississippi.

(Signed) LUKE CATES & CO. [SEAL.]
CATES & ANDREWS. [SEAL.]

[Written across face:] Luke Cates, L. Andrews, R. C. Cates.

Said note credited Nov. 16, '85, with $1,100.00.
" " " Dec. 14, '85, " 900.00.

$4,000.00. CORINTH, MISS., *Jan'y* 18, '86.

On the 1st November after date we and each of us promise to pay the Tishomingo Savings Institution the sum of four thousand dollars, with interest from date until paid at the rate of ten per cent. per annum, for value rec'd, payable at the Tishomingo Savings Institution, in Corinth, Mississippi.

(Signed) R. C. CATES. [SEAL.]
D. ANDREWS.
LUKE CATES. [SEAL.]

81 $200.00. CORINTH, MISS., *Oct.* 6, '86.

One day after date we and each of us promise to pay the Tishomingo Savings Institution the sum of two hundred dollars, with interest from date until paid at the rate of one per cent. per month, for value received, payable at the Tishomingo Savings Institution, in Corinth, Mississippi.

(Signed) ANDREWS, CATES & CO. [SEAL.]

$250.00. CORINTH, MISS., *Nov.* 30, '86.

One day after date we and each of us promise to pay the Tishomingo Savings Institution the sum of two hundred & fifty dollars, with interest from date until paid at the rate of 1 per cent. per month, for value received, payable at the Tishomingo Savings Institution, in Corinth, Mississippi.

(Signed) ANDREWS, CATES & CO. [SEAL.]
D. ANDREWS. [SEAL.]

$643.32. CORINTH, MISS., *Nov.* 30, '86.

One day after date we and each of us promise to pay the Tishomingo Savings Institution the sum of six hundred forty-three & $\frac{32}{100}$ dollars, with interest from date until paid at the rate of ten per cent. per annum, for value received, payable at the Tishomingo Savings Institution, in Corinth, Miss.

(Signed) ANDREWS, CATES & CO. [SEAL.]

82 UNITED STATES OF AMERICA, STATE OF MISSISSIPPI, }
& the Eastern Division of the Northern District Thereof. }

This day personally appeared before me, C. W. McCord, United States commissioner in and for the eastern division of the northern district of the State of Mississippi, A. H. Taylor, president of the Tishomingo Savings Institution, a corporation doing a general banking business at Corinth, in the State of Mississippi, and in the county of Alcorn, who, being duly sworn, says the facts stated in the foregoing answer, as of his own knowledge, he knows to be true, and those stated upon information and belief he verily believes to be true.

A. H. TAYLOR,
President of the Tishomingo Savings Inst.

Sworn to & subscribed before me this May the 14, 1887.

C. W. McCORD,
United States Commissioner.

83 *Order Appointing Receivers. Filed Dec.* 24, 1886.

Circuit Court of the United States for the Eastern Division of the Northern District of the State of Mississippi.

J. H. ALLEN *et al.*
vs. } 41.
R. C. CATES *et al.*

Be it remembered that on this day came on to be heard this cause on the application of complainants to have a receiver appointed to take charge of and control the assets and effects of the defendants, R. C. Cates, D. Andrews, and L. L. Cates, conveyed or attempted to have been conveyed by a deed of assignment made by them on the 7th day of December, 1886, a copy of which is filed as an exhibit to the bill in this cause, and it appearing to the satisfaction of the court that all parties interested in said effects, by their attorneys, had waived the notice required by law and consent and agree to the appointment of a receiver and suggest W. J. Curtis & J. K. Herman as suitable persons, and it further appearing to the satisfaction of the court that the appointment of receivers would promote the interest of all parties and enhance and preserve the assets and property in litigation, it is therefore ordered by the court that W. J. Curtis, of Lee county, and J. K. Herman, of Alcorn county, be, and they are hereby, appointed receivers of all the lands, chattels, goods, wares, mer-

84 chandise, notes, accounts, moneys, choses in action, books of accounts, and all other effects of Andrews, Cates & Co., Cates & Andrews, R. C. Cates, D. Andrews, and L. L. Cates, conveyed or attempted to have been conveyed by them or either of them by the said deed of assignment; the said W. J. Curtis to be receiver of all the assets of the firm of Andrews, Cates & Co. of whatsoever character or kind, consisting of their goods, wares, merchandise, books of accounts, notes, claims, judgments, choses in action, chattels, monies, lands, and effects, and of all the individual property of R. C. Cates, D. Andrews, and L. L. Cates in Lee, Itawamba, Pontotoc, and Union counties, except such as is to them exempt from execution by law; the said J. K. Herman to be receiver of all the assets of the firm of Cates & Andrews of whatsoever character or kind, consisting of their goods, wares, merchandise, books of accounts, notes, claims, judgments, choses in action, chattels, monies, lands, and effects, and all the individual property of R. C. Cates, D. Andrews, & L. L. Cates in Alcorn, Tippah, & Prentiss counties, except such as is exempt to them from execution by the law. Each of said receivers shall give bond in the penal sum of five thousand dollars, with two or

85 more good sureties, to be approved by a commissioner of the United States, and conditioned for the faithful performance of his duties as such receiver and the faithful application of the proceeds of the assets and collections that come into his hands ac-

cording to the orders of this court. Said receivers shall be under the special directions and control of this court, and shall file with the clerk thereof, at Aberdeen, on the 1st of each month, a monthly report showing his actions and doings in the premises. The said receivers shall have full power and authority to collect any and all debts, demands, and claims of the said Andrews, Cates & Co., Cates & Andrews, D. Andrews, R. C. Cates, and L. L. Cates, whether the parties who owe the sum may have been summoned as garnishees or not in any attachment suit or otherwise, and shall have full power and authority to give good and binding receipts, releases for the same as if no such garnishment had been served on the parties, and shall have full power and authority to compromise any debt, claim, or demand when in their judgment it is to the best interest of parties interested, and may, if they deem necessary or proper, bring suits for the collection of debts, &c. They are
86 authorized and empowered to sell the goods, wares, merchandise, chattels, and other effects which may come into their hands as receivers, either private or public sale and either at retail, job lots, or in bulk, as in his judgment seems best to promote the interest and enhance the value of the estate. They shall take possession and charge of the real estate conveyed in said assignment, and shall rent and manage the same to the best interest of the estate, and shall collect the rents and profits. They are authorized to employ such assistants as in their judgment shall be necessary and proper and pay them a fair compensation for their services, and to pay reasonable attorney's fees for legal advice and assistance in the conduct of the business. Whenever discretion is given them they shall exercise a sound discretion for the best interest of the estate.

The sheriffs of Lee and Alcorn counties are ordered to turn over to said receivers respectively (after they have given bond as aforesaid) any and all property, notes, accounts, monies, books, and effects of Andrews, Cates & Co., Cates & Andrews, R. C. Cates, D.
87 Andrews, & L. L. Cates that they may have in their possession by virtue of levy under writs of attachment or sequestration or otherwise, and upon taking the receipts of the receivers therefor shall be discharged from further liability in the premises.

Said receivers shall hold the proceeds of the sale of property and the collections of debts subject to the future orders of this court, and in case no order is made by the court and agreement is made between the parties as to a proper repository shall, as soon as he has received three thousand dollars, deposit the same with the clerk of this court, at Aberdeen, in no event keeping in his hands more than $3,000.00 at one time.

This order appointing receivers by agreement shall not be taken as a confession of any of the allegations in the bill nor as a waiver of any legal rights or priorities between the parties.

Ordered in vacation, Dec. 21st, 1886.

R. A. HULL, *Judge.*

88 *Bond of W. J. Curtis, Receiver. Filed Dec.* 24, 1886.

Know all men by these presents that we, W. J. Curtis, as principal, and J. Q. Robins, J. A. Blair, J. H. Miller, J. W. Frazer, & J. S. Holditch, as sureties, are held and firmly bound unto the United States in the penal sum of five thousand dollars ($5,000.00); well and truly to pay which we bind ourselves and our legal representatives.

The condition of this obligation is that whereas the above-bound W. J. Curtis hath been appointed by the circuit court of the United States for the eastern division of the northern district of the State of Mississippi a receiver in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, now pending in said court:

Now, if the said W. J. Curtis shall well and truly and faithfully perform his duties as said receiver, and shall apply the proceeds of the estate that shall come into his hands as receiver according to the orders of the said court, and shall do and perform the orders of the court in the premises, then this obligation to be utterly null and void and of none effect; otherwise to remain in force and effect.

Witness our signatures this 22d day of December, 1886.

W. J. CURTIS.
J. Q. ROBINS.
J. A. BLAIR.
J. H. MILLER.
J. W. FRAZER.
J. L. FRULY.
J. S. HOLDITCH.

Approved Dec. 23d, 1886.
P. M. LAVERY,
U. S. Commissioner.

89 *Bond of J. K. Herman, Receiver. Filed Dec.* 24, 1886.

Know all men by these presents that we, J. K. Herman, as principal, and J. Q. Robins, A. McClamrock, I. W. Phillips, as sureties, are held and firmly bound unto the United States in the penal sum of five thousand dollars ($5,000.00), well and truly to pay which we bind ourselves and our legal representatives.

The condition of the above obligation is whereas the above-bound J. K. Herman hath been appointed by the circuit court of the United States for the eastern division of the northern district of the State of Mississippi a receiver in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, now pending in said court:

Now, if the said J. K. Herman shall well and truly and faithfully perform his duties as such receiver, and shall apply the proceeds of the estate that shall come into his hands as receiver according to the orders of the said court, and shall do and perform the orders of the court in the premises, then this obligation to be utterly null and void and of none effect; otherwise to remain in full force and effect.

Witness our signatures this 24 day of December, 1886.

J. K. HERMAN.
J. Q. ROBINS.
A. McCLAMROCK.
I. W. PHILLIPS.

Approved this 29th Dec., 1886.
C. W. McCORD,
U. S. Commissioner.

90 THE UNITED STATES OF AMERICA:

Circuit Court for the Eastern Division of the Northern District of the State of Mississippi.

J. H. ALLEN *et al.*
v.
R. C. CATES *et al.* } No. 41. In Chancery.

It is agreed between the solicitors for complainants and defendants that the depositions of J. H. Allen, complainant, and J. R. Howell may be taken without the issuance of commission and without the giving of notice, the commission and notice being wa-ved, and that said parties can go before any officer authorized to administer an oath and answer the following interrogatories; their answers to be taken down by said officer, after first swearing the said witnesses, and certified by him to the said court, and may be used as evidence in the trial of the above-styled cause as if commission and notice had issued, subject to objections from any other cause.

ALLEN & ROBINS,
Atty's for Complainants.
T. D. YOUNG,
Att'y for Assignees.

Interrogatories to be Propounded to J. H. Allen, One of Complainants in said Cause.

91 Int. 1. Are you one of the complainants in the above-styled suit? What business are you engaged in and what were you engaged in — the year 1886?

Int. 2. Of what firms were you a member in 1887, and to which, if either, of said firms was Luke Cates & Co. or Andrews, Cates & Co., of Tupelo, Miss., indebted?

Int. 3. What, if anything, did the firm of Andrews, Cates & Co. owe the firm of Allen, West & Bush on the 11th day of Dec., 1886, the day your account was balanced and sworn to by J. R. Harrell? Give the names of the members of each of said firms.

Int. 4. Explain how the first entry on said account, "Aug. 29, to bal. trans. from Luke Cates & Co., $14,699.87," came to be made.

Int. 5. Explain this item on said account, to wit: "Dec. 11, comm. on deficit as by agreement, say 1,460 B. C. @ $1.25, $1,825." State fully what this charge means and why it was made and to what "agreement" reference is made in said entry and with whom said

agreement was made and when and where. Answer fully how and why you arrived at the debit $1,825.00.

Int. 6. What facilities had the members of the firm of Andrews, Cates & Co. of knowing the amount of their account with you and what, if anything, did any or either of them say in reference to said account and its correctness or incorrectness?

Int. 7. Did your firm render unto Luke Cates & Co. or Andrews, Cates & Co. any statements of their account; and, if so, when and how? What objections, if any, did the firm of Luke Cates & Co. or Andrews, Cates & Co. or either member of the firm offer
92 to said statements and to the amount of said account? State, if you can, when the last statement of their account was rendered to them and the balance shown by said statement to have been due from said firm to Allen, West & Bush, and what, if any, objection was made to the same and by whom.

Int. 8. Did you tell R. C. Cates in January or Feb. or any other time in the winter or spring of 1886, when he went to New Orleans to see you, in New Orleans, at the cotton exchange or in your office or at any other place, that the account of Luke Cates & Co. with Allen, West & Bush was between $10,000.00 and $12,000.00; and, if so, how did you arrive at that amount, and was it correct?

Int. 9. If you have not done so, in answer to some person's interrogatory, state fully all you know about the change of the firm name from Luke Cates & Co. to Andrews, Cates & Co., and why R. C. Cates & D. Andrews did not retire from the Tupelo business or the firm of Luke Cates & Co., as they intended to do, in Jan., 1886.

Int. 10. State any and all representations, if any, made by either member of the firm of Luke Kates & Co. to you during the year 1886 in reference to the solvency or insolvency or financial condition of the firms of Luke Cates & Co., Andrews, Cates & Co., or Cates & Andrews, or as to the financial standing or ability of the respective parties. State fully all conversations on this subject, and give time and place, and state particularly any such conversations had with R. C. Cates, if any.

93 Int. 11. Did R. C. Cates tell you in New Orleans, soon after the failure of Andrews, Cates & Co. & Cates & Andrews, that he had drawn out of the Tupelo business some time before their failure $2,000 or $3,000.00 to pay what he owed the heirs of the Mills estate, and that that was all he had drawn out of that business? If you had any conversation with him about that time on that subject, state fully all that he said. How long before the assignment did he say it was he got the money out, and what did he say he did with it?

Int. 12. State anything else you may know in connection with this case.

ALLEN & ROBINS,
Sol's for Complainants.

Cross-interrogatories Propounded to J. H. Allen & J. R. Howell.

To J. H. Allen:

1st. When did Luke Cates & Co. open this ac. with Allen, West & Bush & when did they cease to do business with you?

2d. When did Andrews, Cates & Co. open their ac. with Allen, West & Bush & when did they cease to do business with said firm?

3d. The ac. you have testified about in your direct examination does not embrace all the business and items of ac. which they
94 had with Allen, West & Bush from the first to the last, does it? I mean Luke Cates & Co. & Andrews, Cates & Co. when I say they.

4th. What were the terms on which you advanced money & handled cotton for Luke Cates & Co. & Andrews, Cates & Co.?

5th. When they obtained money from Allen, West & Bush and agreed to ship them cotton they were charged commissions, insurance, storage, drayage, &c., on such cotton, whether shipped or not, were they not; and, if not, what did you charge thereon?

6th. State how often this occurred, from the beginning to the ending of your ac., and the amount charged therefor in each instance.

7th. How much of your account covers such cotton? Give dates, items, and amount in the aggregate.

8th. Please itemize the amounts of money advanced and loaned by Allen, West & Bush from time to time, with their charges therefor & rate of interest on the same.

9th. Was it not Allen, West & Bush's custom to render statements at regular stated intervals of the ac. with Luke Cates & Co. & Andrews, Cates & Co., including interest at the rate above stated by you, and if not paid thereafter to charge interest on such interest, and did you not or have you not done this in ac. testified about in your direct examination?

10th. If you answer the last above interrog. in the affirmative, then please state the amount in full of all interest charged on interest, giving the exact figures.

95 11th. If, in answer to interrogatory 5th in direct examination, you say you or the firm of Allen, West & Bush had an agreement with Luke Cates & Co. or Andrews, Cates & Co., or any or either member of said firms, then please state whether or not the same was in writing; and, if in writing, then please append the same thereto as "Exhibit A."

12th. State the family relationship existing between you or your wife & R. C. Cates or his wife, if any.

13th. State whether or not R. C. Cates, when you met him in New Orleans after his failure, told you he had had a talk with your att'y, Mr. Robins, and that he, Mr. Robins, had advised or suggested to him the propriety of visiting you and endeavoring to arrange a compromise with you or to get you to aid him in effecting a compromise with his creditors, or anything to that effect.

14th. Who keeps the books of Allen, West & Bush?

15. What part of the business do you attend to?

16. Then you know nothing of the correctness of the items of the ac. in question except as the same appears on the books, do you?

T. D. YOUNG, *Att'y, &c.*

To J. R. Howell:

1st. How many employees had Allen, West & Bush when the ac. was being made with Luke Cates & Co. & Andrews, Cates & Co.? Who were they, and what was the duties of each with reference to their business, and what, particularly, was yours?

96 2d. All you know about the correctness of the ac. in question is simply what your books show, is it not?

3rd. You only entered the items on the books kept by you as they appeared on the day books, journals, &c., without knowing personally and of your own knowledge anything as to their correctness whatever, did you not?

T. D. YOUNG, *Att'y, &c.*

J. H. ALLEN *et al.*
v.
R. C. CATES *et al.*

Answers of J. H. Allen and J. R. Harrell to Interrogatories Propounded to Them in the Above Case.

J. H. ALLEN answers as follows:

1st. I am and was engaged in the general commission and cotton factorage business.

2d. Of Allen, West & Bush, N. O., La.; Allen, Bush & West, Mobile, Ala., and Allen, West & Co., St. Louis, Mo. They were indebted to Allen, West & Bush, New Orleans, La.

3d. $16,765.38. The members of the firm of Luke Cates & Co. was composed of Luke Cates, Robert C. Cates, and David Andrews, and the firm of Andrews, Cates & Co. was composed of David Andrews, Robert C. Cates, and Luke Cates, exactly the same parties in both firms.

4th. Luke Cates & Co. having changed the name of the firm to Andrews, Cates & Co., though exactly the same parties composed the firm of Andrews, Cates & Co. that composed the firm of

97 Luke Cates & Co., they having informed us of this change, but telling us the same parties composed the firm of Andrews, Cates & Co., we made the change to agree with their style of the firm.

5th. Our agreement with Luke Cates & Co. and Andrews, Cates & Co. was they were to ship us a hundred bales of cotton for every thousand dollars advanced and carried over for them from the spring and summer to the next season, and if the- refused or failed to ship the cotton or any part of it they were to pay us $1.25 a bale commission as if the cotton had been shipped and because we had advanced them up to August 29th, 1886, fourteen thousand six hundred dollars ($14,600.00), for we never required any number of bales for money advanced after the first of Sept., and we always keep our

customers well supplied with money to handle cotton to ship us, and after that time no am't is charged for commissions for advancing money to buy or control cotton; and, as they had shipped us no cotton in the cotton year commencing first of September, 1886, for the advances made during the winter, spring, and summer before to make and control the crop, and as the- had the use and benefit of this large amount of our money and had sold their cotton at home or shipped it to others, we were by their agreement and by the way we had been doing business with them and other customers in previous years *we were* entitled to $1.25 a bale on 1,460 ac.

98 So that makes the $1,625.00 debit you ask about. The agreement was made and fully understood by Luke Cates and me when he was here in January, 1886, and when I saw him in September, 1886, in Tupelo, Miss., and by Mr. Robert C. Coates when he was here in the spring of 1886 and when he came to see me in Jackson, Tenn., in September, 1886, for I had four long personal interviews with R. C. & Luke Cates on this matter in 1886; twice Mr. R. C. Cates came to see me exclusively on this business, and once Luke Cates came here to see me, and I went to see him once in Tupelo, and they can claim no misunderstanding, for I had the same agreement the year before and charged them on cotton not shipped in their last of August statement, and I have never had one word of objection or complaint to any statement ever rendered them that I know of.

6th. The firm had every facility for knowing how they stood with us, for we kept the account in the name of Luke Coates & Co. through the business season from last of August, 1885, to last of August, 1886, and Mr. R. C. Cates had written me that he was coming to see me when I got to Jackson, Tenn., and to let him know when I got there; so I wrote him when I would be there, and I wrote my house to send Luke Coates & Co.'s statement to me up to the end of August, as that is when we make up all statements on our books and close the year's business, and I handed this

99 statement in person to Robert C. Coates, and we looked over it together, and there was commissions charged for advancing on that statement; also commissions, $1.25 per bale, for cotton not shipped as per our agreement of one bale to every ten dollars advanced during spring and summer for the advances in 1885, and Mr. Cates said it was all right. He made not one word of objection then, nor has he or any of the firm ever done so since, that I have ever heard of.

7th. We rendered them a statement on the 15th Jan'y, 1886, and a statement August 29th, 1886. We gave the Jan'y statement to Luke Cates when he was here to see me, and I handed Mr. Robert C. Cates the other in Jackson, Tenn., and, as stated above to interrogatory 6th, I have never heard a word of objection or complaint against a single item in any of our statements, for we only charged what we agreed, and I have recently read over all the letters received from them and I see no word of complaint in reference to charges in any statements. The statement I handed R. C. Cates in

Jackson, Tenn., in September, 1886, showed a balance due us $15,027.52.

8th. I did not tell Mr. R. C. Cates when down here in the spring that the account was only ten thousand dollars. I told him what the account was and told him Luke Cates had been promising to reduce it and they must reduce it to ten thousand dollars, as
100 that was as large amount as we wanted anybody to owe us. I showed him just the amount our books showed was due and the number of bales of cotton on hand. I don't remember the exact date R. C. Cates was there, but don't think the amount shown by the books was as small as $12,000.00 any time that spring.

9th. Mr. Luke Cates wanted us to give him credit and let him buy the Tupelo business and let R. C. Cates and D. Andrews out; said he could give John Allen, Shelt. Stribling, and his father as security, but we told him we could and would not release R. C. Cates and D. Andrews. He said R. C. Cates was determined to draw out. I told Luke Cates we gave R. C. Cates and D. Andrews the credit; we knew he had but little money & etc.

10th. Luke Cates told me when here in Jan'y that the business at Tupelo was entirely solvent; that he could take that business and pay all the debts and have good deal of money left; that Bob Cates was giving him much trouble by threat-ning to close out the firm at a big sacrifice. He said Bob Cates and Dave Andrews were worth a great deal of money and had surplus money, but were afraid of him and would not put it in the business in Tupelo. R. C. Cates told me when here that Luke had managed the Tupelo business badly, but that he and Andrews had all the time made
101 money, and that they were abundan-ly able to pay, let come what would. He said all they wanted was a little time so they would not have to sacrifice their property. I told him we had no desire to press them; that if they were absolutely certain they were good and solvent I would wait if they would guarantee the shipment of a bale of cotton for every ten dollars and pay us 2½ commissions for advancing for spring and summer advances. He agreed to these terms and said they were more than able to pay under any and all circumstances, and he expressed himself as very grateful to me for giving him time, and when R. C. Cates came to see me in Jackson, Tenn., in Sept., 1886, he told me they had everything in good shape and were abundantly solvent and would be able to pay everybody in full and have lots left, but that he did not want us to push him; that he wanted to pay off the goods merchants first, so as not to injure his credit; said they were doing finely and making money at Tupelo since Dave Andrews had gone there. He told me Luke Cates had lost good deal of money by shipping cotton, as cotton sold very high in Tupelo, and they might want to sell their cotton in Tupelo and pay the commissions on the deficit instead of shipping the cotton, for he said Luke Cates & Co. often lost five or ten dollars a bale, but if they did not ship they only had to pay $1.25 deficit and this would be a big saving, and etc. I told
102 him if he could save money by it I had no objections to his selling at home and paying us the commissions as agreed on.

He looked over the statement from here where we had charged him on the deficit on cotton, and we had him also charged 2½ commissions for advancing on this statement; I gave it to him at Jackson, and he said the statement was correct; but after their failure I deducted the 2½ commissions we had charged in August for advancing, for while it was according to contract, still I thought they owed us more than we would ever be able to collect anyway, so in the statement we sued on the 2½ commissions for advancing is omitted because we saw proper to do so, but not because it was objected to by Andrews, Cates & Co. You will see by statements no 2½ commissions for advancing have been charged since August, two years ago.

11th. Mr. R. C. Cates came to N. O. to see me shortly after the failure of Andrews, Cates & Co. and Cates & Andrews. He said he wanted to know if I would take a cheap compromise on our debt. He said they had no money, but he thought Mr. Taylor, of the Corinth bank, would buy it if I would sell cheap. He said he had never spoken to Mr. Taylor about it, but he just thought he would buy, and that he (R. C. Cates) would help Mr. Taylor wind up the Kossuth business, and that D. Andrews was willing to help wind up the Tupelo business. I asked R. C. Cates if he had drawn
103 anything out of the Tupelo business. He said yes, he had drawn $2,000.00; and some time before the failure I asked him what he did with it. He said he had paid it to the Mills estate that he was administrator for. I asked him if that was all he had drawn, and he said, Yes. I asked him if they had paid up any of their debts that fall. He said, Yes. I asked him whom. He said he did not remember. I asked him how he could make me such statements and promises and then treat me as he had. He said Luke Cates and Luke Cates & Co.'s book-keeper had deceived him about the way the business stood. I told him he had told me, and Andrews had fully investigated the business and knew it was entirely solvent and good. I asked R. C. Cates what the- had done with all their fall sales and collections, and he said he had a large debt to pay the Mills estate.

12th. I know we advanced and carried over for Luke Cates & Co. and Andrews, Cates & Co. on the most sacred promises that we should never loose a cent by them under any circumstances; that they were abundantly solvent, and only wanted a little time. I gave them all the time and money they asked for. They never shipped us a bale of cotton after last January a year ago, and they have never paid us a cent. As you will see by statements, some cotton has gone to their credit since then, but not a bale of cotton or a dollar in money was received since January, 1886: All the credits on statements are for cotton received at and prior to
104 *to* Jan'y, 1886. They put us off and deceived us with good, fair promises until they made an assignment and p-eferred so much before us. I don't think, if their assignment stands, we will ever get a cent. I had strong faith in Andrews, Cates & Co.; thought they were honorable, Christian gentlemen, and as solvent and good as they said they were. I enclose some letters from Luke

Cates & Co., Luke Cates, R. C. Cates, and a letter from D. Andrews after the failure, to show the way they wrote us and the kind feeling and confidence they seemed to have, and mark — Exhibit "A."

JAMES H. ALLEN.

Sworn to and subscribed before me this 12th October, 1887.

THEO. GUYOL, *Notary.*

105 J. H. ALLEN *et al.* }
vs.
R. C. CATES *et al.* }

Answers of J. H. Allen and J. R. Harrell to Interrogatories Propounded to Them in the Above Case.

J. H. ALLEN answers cross-interrogatories as follows:

1. The account of Luke Cates & Co. was opened with us 22nd September, 1881, and not closed until the statement of August 29th, 1886, but they had shipped us no cotton or paid us no money since January, 1886, several months before the account was closed.

2. Luke Cates & Co. and Andrews, Cates & Co. being exactly the same firm, we let the business year from last of August, 1885, to last of August, 1886, continue to last of August, 1886, in name of Luke Cates & Co., for they had some cotton on hand, shipped the last in January, 1886, that we were selling as we had opportunity, so the statement after August 29th to the time of the failure is against Andrews, Cates & Co., though Andrews, Cates & Co. never shipped us any cotton or paid us any money on their account, but you see by their letter marked Exhibit "B" they promised payment later on.

3. Yes; the statement included every transaction with both firms from the commencement of our business with them.

106 4. The terms on which we advanced money and handled cotton for them was our general business terms—2½ commissions for money advanced in spring and summer and one bale of cotton in the fall and winter for every ten dollars advanced in the spring and summer before, or if cotton not shipped to pay commissions at $1.25 a bale on deficit they failed to ship up to the agreement of a bale to every ten dollars advanced in the spring and summer, no charge for advancing money after first of September to buy goods or control cotton.

5. When they obtained money in the spring and summer and agreed to ship a certain amount of cotton if they failed to ship the amount we charged them $1.25 a bale on cotton not shipped as per agreement, but we never charged them or anybody a cent for insurance, storage, drayage, *and* etc., except where we had actually received and stored and insured and drayed the cotton. We only charged $1.25 commissions on cotton not shipped as per agreement.

6. We only charged twice for cotton not shipped for the whole time they were doing business with us, as they only fell short on

their agreement twice; first amount, $747.50; second amount, $1,825.00.

7. The full amount charged commission on for cotton not
107 shipped for the whole time Luke Cates & Co. and Andrews, Cates & Co. had accounts with us was $2,572.50, $747.50 August, 1886, and $1,825.00 Dec. 11, 1886, making $2,572.50. See Exhibit C.

8. We have made out full statements of every transaction with Luke Cates & Co. and Andrews, Cates & Co. from the beginning to the close of our business with them, marked Exhibit "D," showing we only charged 8 % per annum interest.

9. You will see by statements to them that when they are called for and rendered interest is calculated and it becomes an account stated, and if not paid when another account is rendered we have to charge from the account stated in last statement. We know of no exception to this rule in making up statements. The law of this State is when any money is paid the first payment shall first go to pay the interest on account or note. We give you in statement marked Exhibit "E" what would be amount of interest on interest if we had never had a cent paid on our account from Luke Cates & Co. from its commencement to its close.

10. In answer to cross-interrogatory 9th we furnish statement fully answering tenth cross-interrogatory.

108 11. Luke Cates & Co. and Andrews, Cates & Co. made these agreements in person, as before explained, and the charges in the statements and no objection to them show they were all thoroughly understood and agreed on. They always preferred coming to see me and making arrangements in person to writing, as you will see by enclosed letters marked Exhibit "A."

12. None of the firm of Luke Cates & Co. are kin to me. R. C. Cates and Luke Cates are first cousins of my wife.

13. I did not understand R. C. Cates to say that our attorney, J. Q. Robins, advised him to come and see us. I thought he said Robins told him he could make no compromise, as he had no authority, and that I was the only one to talk to about that, as I had given no authority to compromise.

14. John R. Harrell keeps the books of the old firm of Allen, West & Bush, in liquidation; also J. H. Allen & Co.'s books.

15. I have always superintended and directed the whole business of Allen, West & Bush since the firm started in business here.

109 16. I do absolutely know of the exact correctness of many of the entries on my books, for I order them made and see them put on the books and know they are correct. I of course don't go over all the calculation of sales, *and* etc., but our books have to balance every month to a cent, so I know by their balancing that all the entries are correct.

JAMES H. ALLEN.

Sworn to and subscribed before me this 12th October, 1887.

THEO. GUYOL, *Notary.*

110 J. R. HARRELL answers as follows:

1. Seven; 1, Jas. C. Reynolds, cashier and correspondent; 2, Ed. J. Donnelly, assistant cashier and assistant account sales clerk; 3, A. H. Parker, Jr., cotton clerk; 4, J. C. Morgan, classer; 5, Aug. Block, Jr., collector; 6, Alex. Tartt, porter and assistant in cotton-room; 7, myself, book-keeper and cotton abstract clerk, my duties being those usually connected with these offices.

2. Yes.

3. The entries in the journal, cash book, and abstract being made by myself previous to posting them, I feel reasonably sure of their clerical correctness. I balance my books every month to a cent, and if there were any errors in an account they would show themselves and would make my balance impossible. My entries in the cash book are made directly from the drafts drawn by the parties, and in so far as these entries are concerned I have personal knowledge of them. The statements marked Exhibit "D" are correct and a copy of the books of Allen, West & Bush.

JNO. R. HARRELL.

Sworn to and subscribed before me this 12th October, 1887.

THEO. GUYOL, *Notary.*

111 STATE OF LOUISIANA, }
Parish of Orleans. }

I, Theodore Guyol, a notary public, duly commissioned and sworn, for the parish and State aforesaid, do hereby certify that James H. Allen and J. R. Harrell have come before me & have by me been duly sworn & cautioned to speak the truth, the whole truth, and nothing but the truth in answer to said interrogatories and cross-interrogatories; did give the foregoing depositions; that the answers of the said J. H. Allen and J. R. Harrell were prepared by themselves & by me carefully read to & thoroughly understood by the said witnesses as their depositions in said cause; that they signed the same as their depositions in my presence; that said depositions have in no manner been changed or altered since the same were subscribed by said witnesses, but that the same have remained in my possession up to the time of sealing & delivering the same to the post office, directed to the clerk of said court.

[SEAL.] Given under my hand & seal of office, at New Orleans, State aforesaid, on this 12th October, 1887.

THEO. GUYOL, *Notary.*

112 "B."

Office of Andrews, Cates & Co., dealers in general merchandise.

TUPELO, MISS., *Dec.* 3, 1886.

Mess. Allen, West & Bush, New Orleans.

D'R SIRS: Your letter of recent date received. In reply have forwarded same to Mr. R. C. Cates, Kossuth, and as soon as we hear from him will write you again.

We are doing all we possibly can to get this business in better shape, but from what we understood from Mr. R. C. Cates Mr. Allen would extend us until at least Jan'y to raise a remittance for you. We are pressing our sales & collections all we can; have not bought any cotton except when we were interested & have been selling here.

Yours truly, ANDREWS, CATES & CO.

[Endorsed:] Exhibit "B." Referred to in annexed deposition of J. H. Allen this 12 October, 1887. Theo. Guyol, notary.

113 Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1881.				Days.	Eight per cent. interest.
Sept.	22.	To y'r s. d., Goar	500	86	9 56
"	30.	" " "	500	78	8 67
Oct.	5.	" " "	500	73	8 11
"	6.	" " "	500	72	8
"	8.	" " "	500	70	7 78
"	"	" Allen, West & Co., 6th inst.	666 16	"	10 36
"	13.	" y'r s. d., Goar	500	65	7 22
"	17.	" " Harbison & G.	496 53	61	6 72
"	19.	" exchange Muscogee Co.	152 44	59	1 99
"	22.	" y'r s. d., Imbs & Co.	748 50	56	9 31
Dec.	10.	" " Jones & Kouns	86	7	13
"	17.	" interest	12 78		
"	"	" balance	269 92		
			5,432 33		77 85

114 Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1881.					Days.	Eight per cent. interest.
Oct.	12.	By N. O. sight		10	66	15
"	"	" pro. 1 b. c.	57 12			
"	"	" " 7 "	347 39			
				404 51	"	5 93
"	13.	" " 7 "	335 25			
"	"	" " 4 "	197 93			
				533 18	65	7 70
"	14.	" Stribling s. d.		169 50	64	2 40
"	15.	" R. C. Cates s. d.		200	63	2 80
"	17.	" Stribling s. d.		139 55	61	1 88
"	19.	" pro. 12 b. c.		568 54	59	7 45
"	22.	" " 1 "		55 05	56	68
"	24.	" " 4 "		184 69	54	2 21
"	25.	" " 2 "		101 47	53	1 19
"	26.	" " 32 "		1,571 42	52	18 16
"	"	" " 8 "		384 19	"	4 44
"	28.	" " 1 "	48 59			
"	"	" " 1 "	51 21			
				99 80	50	1 10
"	31.	" " 2 "		96 06	48	1 02
Nov.	1.	" " 2 "		102 34	47	1 07
"	2.	" " 1 "		51 08	46	52
"	4.	" " 1 "		55 21	44	52
"	5.	" " 1 "		54 12	43	52
"	7.	" " 9 "		456 93	41	4 15
"	11.	" " 2 "		102 07	37	84

Nov.	24.	By pro. 1 b. c.		50 26	24	27
Dec.	10.	" " 1 "		44 36	7	07
				5,432 33		65 07
1881.						
Dec.	17.	By balance at your credit		269 92		

E. E.
New Orleans, 17th December, 1881.

115 Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1882.						
Jan'y	5.	To y'r s. d., Chaffe		84 33	1	02
"	6.	" Allen, Bush & West				
		Balance transferred		186 77		
				271 10		02
		CREDIT.				
1881.						
Dec.	17.	By balance as per statement		269 92	20	1 20
Jan'y	6.	" interest		1 18		
				271 10		1 20

E. E.
New Orleans, 6th January, 1882.

116 Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1882.						
Oct.	2.	To y'r Savory		100	101	2 25
	3.	cash per reg. mint	500 500	1,000	100	22 22
	9.	y'r s. d., Harbison, G. & Co.		52 10	94	1 09
	8.	exchange s. ds.		1,041 40	95	21 98
	10.	cash per mint		500	93	10 33
	11.	y'r s. d., Goar		200	92	4 09
	15.	cash per mint		500	88	9 78
	16.	exchange N. Y.		318 29	87	6 15
	17.	cash per register		500	86	9 56
	20.	y'r s. d., Imbs & Co.		369 05	83	6 81
	18.	" Goar, 200, 313.51		513 51	85	9 69
	22.	" Moriarty		31 45	81	56
	24.	" Goar, 500, 500, 200		1,200	79	21 07
	27.	cash per mint		500	76	8 44
	"	y'r s. d., Goar		200	"	3 38
	28.	exchange, 300		299 70	75	4 98
	29.	y'r s. d., I. I. Rodgers		38 65	74	62
	30.	" Perryman		66 59	73	1 07
Dec.	2.	" Lee Co. b'k	72 62			
		register	500			
		"	500			
	"	" 3 s. d., Goar, 500	1,500			
				2,572 62	40	22 86
	4.	" Robinson	162 55			
	"	cash per mint	500			
				662 55	38	5 59
	8.	y'r s. d., Allen, West & Co.		259 45	34	1 96
	9.	lottery tickets		12	33	09
	"	cash per register		500	"	3 67
	13.	exchange, 712.26		711 37	32	5 06
	14.	p'd you by J. B. Allen, 13th		1,000	30	6 67
	16.	cash per register	500			
	"	" " mint	500			
				1,000	30	6 67

18.	y'r s. d., Goar			300		28	1	87
18.	" " 300, 63.54			363	54	24	1	94
22.	y'r s. d., Cates & Andrews	381	95					
"	y'r s. d., Oliver, F. —— & Co.	55	63					
				437	58	20	1	94
26.	" Morrell & Co.	25	20					
"	" Hess, Mayer & Co.	24	75					
"	" J. Strauss & Co.	55	65					
				105	60	"		47
	Forward No. 2			15,355	45		202	86

117 Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1882.								
Nov. 16.	By proceeds 18 b. c.			831	84	56	10	34
18.	" " 2 "			96	69	54	1	15
20.	" " 10 "			481	18	52	5	56
30.	" " 13 "			654	09	42	6	10
23.	" " 1 "			46	82	49		50
28.	" " 5 "			256	68	44	2	50
30.	" " 16 "			766	90	42	7	15
Dec. 1.	" " 2 "			99	82	41		90
2.	" " 14 "			669	57	40	5	95
5.	" " 9 "			406	39	37	5	34
8.	" " 11 "			506	24	34	3	82
14.	" " 1 "			45	02	28		28
1.	" " 10 "			497		41	4	53
12.	" " 24 "			1,075	44	30	7	17
14.	" " 5 "			237	64	28	1	47
15.	" " 1 "			41	05	27		25
13.	" " 22 "			1,093	42	29	7	04
18.	" " 1 "			43	69	24		23
21.	" " 18 "			865	04	21	4	04
30.	" " 11 "			579	20	12	1	54
1883.								
Jan'y 4.	" " 12 "			583	40	7		91
"	" " 13 "			593	39	7		92
"	" " 50 "			2,368	63	7	3	68
	Forward No. 2			12,839	14		79	37

118 No. 2.

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

Dec. 26.	To forward #1			15,355	45	--	202	86
" "	p'd Imbs & Co.			493	75	20	2	19
1883.								
Jan'y 4.	y'r dup. s. d., Goar			1,000		7	1	56
5.	" " Suddoth	50						
	" Cates balance	513	22					
				563	22	6		75
11.	interest			127	99			
				17,540	41		207	36

CREDIT.

1883.								
Jan'y 4.	By forward #1			12,839	14		79	37
" "	balance			4,701	27			
				17,540	41			
Jan'y 11.	To balance due us			4,701	27			

E. E.
New Orleans, 11th January, 1883.

119 (1.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1883.								
Jan'y	11.	To balance per statement			4,701 27	224	234	
	"	ins. & postage reg.			3 15	"		15
	15.	y'r s. d., F. M. Goar			8 45	220		39
	19.	" Weolem			125	216	6	
	18.	Allen, B. & W. b'l'ce			5,645 96	217	272	21
	22.	y'r s. d., Norton & E.			965 03	213	45	68
	"	" Goar			200	"	9	47
	24.	" Perryman			60 19	211	2	81
	25.	exchange, $500			500 88	210	23	33
	29.	y'r s. d., Goar			85 93	206	3	89
Feb'y	5.	" S. J. High			58 48	199	2	56
	2.	" 3 s. d., Goar, 200, 200, 200			600	202	26	93
	3.	" "			400	201	17	87
	7.	exchange			348 97	197	15	23
	10.	y'r s. d., Goar			200	194	8	62
	14.	" 3 s. d., Goar			922 85	190	38	93
	16.	" "			200	188	8	36
	17.	" "			200	187	8	31
	20.	" Norton & E.			1,038 45	184	42	44
	24.	" 2 s. d., Goar, 100, 298.66			398 66	180	15	92
M'ch	2.	p'd Imbs & Co.			400	174	15	47
	3.	y'r 2 s. d., Goar, 100, 100			200	173	7	69
	5.	p'd Imbs & Co.			200	171	7	60
	8.	y'r s. d., Goar			365 50	168	13	63
	10.	" Moriarty & Co.			184 67	166	6	79
	12.	" Hill			50	164	1	82
	24.	" Goar			44 24	152	1	49
	27.	" Norton & E.			996 48	149	32	98
	28.	" Goar			26 70	148		86
Ap'l	3.	exchange			470 09	142	14	83
	9.	y'd s. d., Clayton	650					
	"	exch'ge, " d'ft	65					
					650 65	136	19	64
	13.	p'd Imbs & Co.			466 39	132	13	67
	18.	exchange			274 84	127	7	73
	26.	y'r s. d., Norton & E.			1,207 99	119	31	91
May	2.	p'd Brewer & Co.			193 01	113	4	85
					22,393 83		946	06

120 (2.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

May	—.	To forward #1			22,393 83	--	964	06
	4.	exchange			501 25	111	12	36
	15.	p'd Imbs & Co.			200	100	4	44
	22.	y'r s. d., Goar			23 25	93		48
June	4.	p'd Imbs & Co.			200	80	3	56
	"	net exchange	300		300 45	"	5	33
	19.	" "	200		200 30	65	2	89
July	26.	Norton & E.			784 06	28	4	88
Aug't	1.	exchange	250		250 62	22	1	22
	14.	"	300		300 75	9		60
	23.	interest			186 50			
	"	comm., 2½%, on 1,800			45			
					25,426 01		999	82

1883.				
Aug.	23.	To balance due us, E. & O. E.		2,065 09

120½ (1.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1883.								
Jan'y	13.	By error, interest last statement			50 49	222	2 47
	"	proceeds 3 b. c.			124 91	"	6 42
	15.	2			88 24	220	4 30
	18.	28			1,172 30	217	56 51
	25.	5		222 11			
	"	1		40 99			
					263 10	210	12 27
	26.	21		948 46			
	"	6		288 63			
					1,237 09	209	57 45
Feb'y	5.	R. H. Allen s. d			522 85	199	23 08
	11.	proceeds 43 b. c.			1,955 27	193	83 85
	12.	27			1,142 10	192	48 73
	13.	1			48 09	191	2 04
	15.	1			39 44	189	1 64
	16.	43		2,005 02			
	"	error, weight, P. H. F., 84		6 96			
	"	proceeds 2 b. c.		92 89			
					2,104 87	188	87 95
	21.	2			91 62	183	3 70
	23.	1			45	181	1 81
	26.	16			714 27	178	28 24
	27.	Lily & Son s. d.			283 61	177	11 10
	28.	Stocks s. d.		90			
	"	proceeds 6 b. c.		249 59			
					339 59	176	13 26
Mc'h	1.	1			28 85	175	1 09
	3.	22			997 59	173	38 33
	5.	3			126 55	171	4 79
	10.	18			867 27	166	31 98
	13.	4			173 95	163	6 27
	17.	1			43 45	159	1 52
	19.	2			82 89	157	2 86
	20.	1			36 03	156	1 25
	23.	1			42 44	153	1 43
	24.	10			448 29	152	15 13
	26.	5		194 56			
	"	2		67 87			
					262 43	150	8 73
	27.	Allen, B. & W., Jan'y, '83			20	149	01
	30.	proceeds 1 b. c.			37 26	146	1 20
					13,370 04		584 87

121 (2.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

		By forward # 1			13,370 04	--	584 87
Ap'l	4.	proceeds 1 b. c.			36 63	141	1 13
	5.	8			294 28	140	9 15
	7.	23			934 51	138	2 86
	9.	11			416 14	136	12 57
	11.	34			1,540 49	134	45 86
	12.	Lily & Son s. d.			60 09	133	1 77
	16.	Utica, N. Y., st.		2,259 22			
	"	proceeds 3 b. c.		104 25			
					2,363 47	129	67 74
	13.	7			284 81	132	8 33
	18.	9			329 11	127	9 29
	21.	2			81 22	124	2 23
	23.	5			206 40	122	5 58
	26.	2			69	119	1 82
	27.	4			150 76	118	3 93

	28.	sundry s. d.	24				
	"		250				
	"	Phelan's check	5 25				
				279	25	117	7 25
May	1.	Clayton & C. s. d.		185	64	114	4 69
	2.	proceeds 2 b. c.		86	70	113	2 16
	3.	1		37	97	112	92
	5.	3		106	10	110	2 59
	15.	A. R. Ballard s. d.	93				
	"	Allen, B. & W.	50				
				143		100	3 18
Ap'l	28.	proceeds 12 b. c.		504	12	127	13 10
June	6.	Lily s. d.	169 44				
	"	Allen, B. & W.	60				
				229	44	78	3 97
	8.	proceeds 2 b. c.	91 31				
	"	7	323 64				
				414	95	76	6 99
	11.	1		32	20	73	52
	23.	McWhorton & Co.	85 69				
	"	proceeds 1 b. c.	50 67				
				136	36	65	1 84
	30.	7		329	20	58	3 95
July	14.	10		452	52	40	4 02
	20.	1		7	16	34	05
Aug.	2.	4		149	78	21	70
	10.	2		89	48	13	26
	23.	balance		2,065	09		
				25,426	01		813 32

122 (1.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

1883.							
Aug.	23.	To balance per statement		2,065	09	92	42 22
Sept.	5.	p'd Imbs & Co.		81	50	79	1 42
	3.	exchange, 531.25		531	78	81	9 56
	7.	s. d., Rankin S. Hdw. Co.	81 64				
	"	exchange thereon	15				
				81	79	77	1 39
	10.	s. d., Anderson, 76.76; exch'ge, .08	76 84				
	"	" Tapp, L. & Co.	30				
				106	84	74	1 74
	11.	" Robinson Bros. & Co.	79 57				
	"	exchange above	15				
				79	72	73	1 28
	13.	" McFarran, S. & Co.	99 02				
	"	" Gathright & Co.	150				
	"	" McCord & Aydelotte	186 50				
	"	exch'ge on G. & Co., McC. & A.	33				
				435	85	71	6 86
	18.	p'd H'y Ames & Co.	159 90				
	"	" I. Strauss & Co.	33 40				
	"	" Harrelson & Co.	72 85				
				266	15	66	3 90
	"	exchange		250	22	"	3 37
	20.	d'ft, Bamburger, B. & Co., & exch'ge		280	77	64	5 40
	26.	y'r s. d., Goar		300		58	3 87
	29.	" "		100		55	1 22
Oct.	3.	cash, mint		500		51	5 67
	5.	" "		500		49	5 44
	4.	exchange		514	75	50	5 71
	6.	s. d., Savery	104 60				
	"	cash per register	500				
				604	60	48	6 44

	11.	cash per register		500		43	4 78
	12.	exchange		187	65	42	1 75
	"	paid Brewer & Co.		21	18	"	20
	13.	y'r s. d, Lee Co. bank		501	25	41	4 56
	19.	exchange		207	32	35	1 61
	24.	cash per register		1,000		30	6 67
	27.	" " "		500		27	3
	"	exchange	900	899	10	"	5 39
	29.	cash per mint		500		25	2 78
	30.	" " reg.		500		24	2 67
Nov.	1.	" " mint		500		22	2 44
		Forward # 2		12,095	56		141 34

123 (1.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1883.							
Aug.	28.	By Allen, B. & W., 27th		172	32	87	3 36
	31.	s. d. on Gumble		57	40	84	1 06
	"	2½%, Aug. 23		45		93	92
Sept.	17.	proceeds 3 b. c.		140	60	67	2 08
	24.	1		16	52	60	21
Oct.	4.	1		43	69	50	48
	9.	4		199	22	45	1 99
	11.	2		102	73	43	97
	10.	1		48	34	44	47
	15.	14		675	93	39	5 85
	18.	8		392	60	36	3 14
	23.	2		92	62	31	63
	25.	1		39	96	29	25
	27.	53		2,609	56	27	15 65
	29.	3		162	04	25	90
Nov.	1.	1		44	60	22	22
	3.	2		95	49	20	42
	9.	3		131	96	14	41
	10.	13		621	52	13	1 79
	13.	48		2,297	91	10	5 10
				7,990	01		45 90

124 (2.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

		To forward # 1		12,095	56	--	141 34
Nov.	2.	cash per reg.		500		21	2 33
	5.	exchange		154	90	18	62
	6.	cash, mint	500				
	"	" register	500				
				1,000		17	3 78
	9.	" Govan		112	70	14	35
	12.	cash, mint	500				
	12.	" reg.	500				
				1,000		11	2 44
	"	exchange		750		"	1 83
	23.	ins. & pos. on registration		4	60		
	23.	exchange		764	77		
	"	paid Strauss & Co.		136	34		
	"	interest		106	79		
				16,825	66		152 69

CREDIT.

		By forward # 1		7,990 01		45 90
Nov.	23.	balance		8,835 65		
				16,825 66		45 90
Nov.	23.	To balance due us		8,835 65		

E. & O. E.
New Orleans, 23 November, 1883.

125 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1883.						
Nov.	23.	To balance per statement		8,835 65	42	82 46
	26.	y'r s. d., Greely, Burnham & Co.	225			
	"	cash per register	1,000			
				1,225	39	10 62
	24.	exchange		1,503 94	41	13 69
	"	y'r s. d., Goar		300	"	2 73
	29.	" " Powisins		10	36	08
	30.	exchange	82 40			
	"	p'd Hyams & Co.	321 43			
				403 83	35	3 13
	"	y'r s. d., F. M. Goar	37 35			
	"	cash register	1,000			
				1,037 35	"	8 07
Dec.	4.	" "		1,000	31	6 89
	5.	y'r s. d., Goar		72	30	48
	6.	exchange		399 90	29	2 57
	7.	cash register		1,000	28	6 22
	8.	exchange		1,633 04	27	9 80
	10.	p'd Schmidt & Z.	156 12			
	"	" Flash, P. & Co.	136 34			
				292 46	25	1 62
	12.	" Meek, F. & Co.		300	23	1 53
	13.	cash register		1,000	24	4 89
	"	y'r s. d., Goar		167 85	"	82
	15.	" "		132 15	20	59
	17.	" "		67 74	18	27
	19.	cash register		1,000	16	3 56
	24.	y'r s. d., Bamburger, B. & Co.		240	11	59
	28.	" Goar		48	7	07
	"	" "		137 86	"	21
1884.						
Jan'y	2.	exchange, "Dec. 31"		349 92	4	31
	4.	ins. & postage registrations		4 60		
	"	interest		120 15		
				21,281 41		161 20
1884.						
Jan'y	4.	To balance due us		15,535 98		

E. & O. E.
New Orleans, 4 January, 1884.

126 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1883.						
Nov.	19.	By proceeds 11 b. c.		530 55	46	5 42
	24.	23		1,096 36	41	9 98
	26.	20		929 10	39	8 05
	28.	27		1,314 29	37	10 80
Dec.	1.	2		93 63	34	76
	5.	2		99 65	30	60

	12.	12			548	58	23	2 80
	21.	1			49	13	14	15
	22.	5			248	23	13	72
	24.	6			282	42	11	69
	26.	13			553	49	9	1 11
1884.								
Jan'y	4.	balance			15,535	38		
					21,281	41		41 08

127 (1.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.							
Jan'y	4.	To balance per statement		15,535	98	115	397 01
	10.	y'r s. d., Carter Bros.		106	14	109	2 57
	11.	paid Hess, Mayer & Co.		500		108	12
	"	exchange		500	50	"	12 01
	14.	y'r s. d., E. P. Shall	47 36				
	"	" Goar	150				
				197	36	105	4 60
	17.	paid Schmidt & Z.	100				
	"	" Moriarty	141 75				
	"	y'r. s. d., Goar	135				
				376	75	102	8 52
Feb'y	2.	" Perryman		300		86	5 73
	4.	" Goar	208 86				
	"	" J. T. Willis	90				
				298	86	84	5 56
	13.	exch'ge to s. ds., 569.84, 468.50		1,039	79	75	17 32
	18.	" 768.61		769	76	70	11 96
	27.	y'r s. d., Goar	149 60				
	"	paid @ office	400				
	"	" "	200				
				749	60	61	10 15
M'ch	4.	y'r s. d., Goar		150		55	1 83
	7.	paid L. Brewer & Co.		53	02	52	61
	10.	y'r s. d., Bridgeford		125	00	49	1 36
	13.	" Goar		200	30	46	2 04
	14.	cash per mint		500		45	5
	17.	y'r s. d., Norton & E.		1,633	98	42	15 24
	"	exch'ge to s. ds., N. Y., 264.15; St. Lo., 223.58		487	73	"	4 55
	18.	y'r s. d., Savery		122	50	41	1 11
	21.	" Goar		100		38	84
	24.	" Tapp, L. & Co.	269 15				
	"	" Meek, F. & Co.	300				
	"	" Robinson & Co.	1,000				
	"	" McCord & A.	235 26				
	"	exchange 2 last d'fts	1 85				
				1,806	26	35	14 05
	25.	cash per register		500		34	3 78
	27.	y'r s. d., Rosenheim		72	39	32	51
	29.	" Hess, Mayer & Co.	500				
	"	cash per register	500				
				1,000		30	6 67
April	7.	y'r s. d., Goar		51	25	21	24
		Forward #2		27,177	17		545 26

128 (2.)

Messrs. Luke Cates & Co. in account with Allen, West & Bush.

		To forward #1		27,177	17	--	545 26
Ap'l	10.	exchange		350	26	18	1 40
"		y'r s. d., St. L's, T. Til'by		10	25	"	04

12.	y'r s. d., F. M. Goar			150	16		53
14.	" McWhorter			250	14		78
15.	exchange			250 25	13		72
24.	y'r s. d., Robinson Bros.	100					
"	" Norton & E.	1,526 32					
				1,626 32	4		1 45
25.	exchange			239 58	3		21
26.	y'r s. d., J. H. Miller			45	2		02
28.	" Goar			90			
"	insurance & postage			17			
"	interest			286 15			
				30,475 85			550 41

1884.
Ap'l 28. To balance per statement 10,787 54

E. & O. E.
New Orleans, 28 April, 1884.

129 (1.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1883.							
Dec. 28.	By proceeds 18 b. c.			854 81	122		23 15
29.	5			238 31	121		6 40
1884.							
Jan'y 4.	12			549 92	115		14 03
14.	s. d., Gumble & Co.			200	105		4 67
7.	proceeds 21 b. c.			945 18	112		23 52
8.	1			45 11	111		1 11
9.	18			881 93	110		21 54
12.	5			252 42	107		5 99
15.	1			44 01	104		1 02
16.	4			190 25	103		4 35
17.	10			490 65	102		11 11
23.	38			1,868 33	96		39 85
27.	1			62 59	92		1 27
31.	7			302 98	88		5 91
Feb'y 2.	4			188 03	86		3 59
8.	1			48 04	80		85
7.	7			322 45	81		5 80
11.	2			92 15	77		1 57
M'ch 5.	sundry s. d.			150	54		1 80
Feb'y 7.	proceeds 19 b. c.			908 22	81		16 34
21.	1			51 06	67		76
22.	2			100 57	66		1 47
28.	1			45 20	60		60
M'ch 1.	10			502 88	58		6 47
4.	11			519 69	55		6 23
1.	2			86 17	58		1 11
14.	New Orleans st.			3 75	45		03
17.	s. d., Harris, P. & Co.			900	42		8 40
15.	New York s. d.			399 50	44		3 90
18.	proceeds 1 b. c.			48 02	41		44
21.	4			886 65	38		1 57
27.	1			49 50	32		35
24.	16			779 87	35		6 06
28.	14			776 65	31		5 35
29.	5			238 67	30		1 59
Apr. 1.	11			600 49	27		3 60
	Forward # 2			13,924 05			241 80

130 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

		By forward # 1		13,924	05		241 80
Ap'l	1.	proceeds 17 b. c.		910	21	27	5 46
	3.	8		351	84	25	1 95
	7.	10		442	71	21	2 06
	2.	30		1,482	06	21	6 92
	8.	4		190	10	20	84
	11.	16		814	24	17	3 08
	16.	3		140	67	12	37
	17.	2		120	10	11	29
	19.	9		462	23	9	92
	25.	cash per express		850		3	57
	28.	balance		10,787	54		
				30,475	85		264 26

131 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.							
Ap'l	28.	To balance per statement		10,787	54	119	285 25
May	1.	exchange		245	74	116	6 32
	10.	paid D. Moriarty		126	70	107	3
	"	exchange		452	94	"	10 75
	13.	y'r s. d., J. W. Burress & Co.		100		104	2 38
	14.	" Lee Co. b'k		104	10	103	2 38
	13.	exchange		99	68	104	2 24
	16.	Allen, B. & W., Ap'l 16		1,703	58	101	38 22
	19.	y'r s. d., B. A. Beard		100		98	2 18
	23.	" F. M. Goar		60		94	1 25
June	4.	" "		200		72	3 20
	16.	paid Halliday Bros.	400				
	"	s. d., Brakeman & Co.	80				
				480		60	6 40
	20.	p'd Henry Ames & Co.		150		56	1 87
	21.	s. d , Lee Co. b'k		92	24	55	1 12
July	14.	" W. Iron R. Co.		58		32	41
Aug.	14.	Allen, W. & Co., 12		1,052	22	13	3 04
	25.	interest		212	40		
	"	y'r s. d., C. H. Clifton		100			
	"	comm., 2½ %, on b'l'ce, $9,803, less 55 b. c., @ $40, viz., $7,600		190			
				16,313	14		369 94

1884.							
Aug.	25.	To balance due us		9,992	27		

132 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.							
Ap'l	24.	By proceeds 6 b. c.		332	96	123	9 07
	21.	1		55	84	126	1 54
	28.	3		167	86	119	4 42
May	1.	3		145	34	116	3 74
	7.	exchange ch'ged Nov. 24		1,503	94	275	91 85
	5.	proceeds 2 b. c.		77	32	112	1 92
	15.	2		105	26	102	2 38
	28.	1		52	40	89	1 03
June	5.	1		50	27	81	90
	7.	7		280	39	79	4 92
	9.	3		132	32	77	2 26
	10.	6		293	92	76	4 95
	16.	A. J. Brown s. d.		250		70	3 89
	18.	proceeds 7 b. c.		305	61	68	4 61
	23.	Ballard & Sons s. d.		47	53	63	66

	26.	proceeds 1 b. c.			46 41	60	61
	28.	7			337 80	58	4 34
July	9.	15			720 35	47	7 52
	12.	Pearce & Co. s. d.			46 32	44	45
	"	proceeds 2 b. c.			91 91	"	89
	18.	8			361 51	38	3 05
Aug.	6.	1			46 48	19	19
	8.	7			292 67	17	1 10
	13.	8			364 79	12	97
	19.	5			211 67	6	28
	25.	balance			9,992 27		
					16,313 14		157 54

133 (1.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.							
Aug.	25.	To balance sheet remd.			9,992 27	192	426 33
Sept.	1.	exchange			397 79	185	16 32
	18.	"			300 30	168	11 20
	22.	y'r s. d., Robinson & Co.	600				
	"	" McCord & A.	225				
	"	" Rosenheim & Co.	58	10			
	"	" exchange	82				
					883 92	164	32 18
	24.	" McPherson, S. & Co.	87	97			
	"	" Warren & Co.	176	35			
	"	" Robinson Bros.	103	41			
	"	" Harbison & G.	150				
	"	" Carter Bros.	179	26			
	"	exchange	88				
					697 87	162	25 09
	25.	Hess, M. & C.			400	161	14 31
	27.	Bloom, T. & Co.			96 30	159	3 39
	29.	Harbison & G.	100				
	"	exch'ge thereon.	10				
					100 10	157	3 49
	30.	cash mint			500	156	17 33
Oct.	7.	60-d. d., Norton & E.			547 85	149	18 11
	10.	cash register			500	146	16 22
	11.	y'r s. d., Jno. I. Adams	150				
	"	" Savery	184	25			
					334 25	145	10 76
	15.	" S. Topp	7	60			
	"	" High & Stone	47	81			
					55 41	141	1 72
	16.	Shelby Topp			28	140	87
	18.	60-d. d., Norton & E.			243 36	138	7 45
	"	cash register			1,000	"	30 67
	20.	s. d., Wessel & Co.			25 31	136	76
	22.	" Topp			23 92	134	68
	24.	" Ralston, B. & Co.	19	50			
	"	cash register	500				
					519 50	132	15 22
	"	exch'ge			250 25	"	7. 33
	"	"			150 15	"	4 44
	27.	s. d., E. M. Carroll			50	129	.1 43
	28.	" High & Stone			111 60	128	3 16
	29.	" S. Topp			107 88	127	3 02
					17,316 03		671 44

134 (1.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.								
Aug.	30.	By proceeds 2 b. c.		95	15	187	5	95
Sept.	8.	13		526	21	178	20	81
	9.	7		280	34	177	11	01
	15.	2		94	13	171	3	57
	1.	P. O. order		100		185	4	11
Oct.	9.	proceeds 1 b. c.		45	32	147	1	47
	13.	7		324	13	143	10	30
	16.	4		183	09	140	5	69
	18.	1		42	65	138	1	29
	20.	4		182	74	136	5	50
	22.	1		45	85	134	1	34
	27.	4		173	42	129	4	96
	30.	6		282	75	126	7	90
	22.	14		659	24	134	19	62
	30.	19		876	81	126	24	53
Nov.	3.	18		803	34	122	21	77
	6.	22		1,003	32	119	26	52
	10.	34		1,496	70	115	38	24
	13.	24		1,082	08	112	26	93
	14.	10		434	75	111	10	71
	17.	6		294	59	108	7	06
	19.	3		136	11	106	3	20
	25.	15		675	87	100	15	
	22.	1		51	96	103	1	17
	25.	20		940	37	100	20	89
	26.	1		52	20	99	1	14
	29.	14		697	58	96	14	87
Dec.	3.	5		252	11	92	5	15
	5.	3		138	42	90	2	76
	8.	1		49	19	87		95
	12.	2		83	87	83	1	53
	11.	4		184	71	84	3	43
	"	4		204	14	"	3	81
	12.	28		1,333	14	83	24	58
	15.	14		537	92	80	9	55
	"	1		46	32	"		82
		Forward		14,410	61		357	13

135 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.								
		To forward		17,316	03	--	671	44
Oct.	31.	cash reg.	1,000					
	"	y'r s. d., S. Topp	23 52					
	"	" " Flash, P. & Co.	24 76					
				1,048	28	125	29	11
Nov.	1.	" Gardner		55	76	124	1	52
	7.	" C. H. Clifton		150		118	3	93
	18.	cash register		500		177	15	00
	10.	y'r s. d., Hart & Co.	75					
	"	" "	90 01					
				165	01	115	4	22
	12.	cash register	1,000					
	"	y'r s. d., Hoyle	450					
				1,450		113	36	41
	13.	S. Topp		39	60	112		97
	14.	Lee Co. b'k		133	28	111	3	28
	17.	S. Topp	20 25					
	"	Meek, F. & Co.	300					
	"	cash register	500					
				820	25	106	1[illegible]	68

	18.	cash register			500	107	11 89
	20.	y'r s. d., Clifton	150				
	"	S. Topp	14				
	"	"	23 67				
	"	Trask, F. & Co.	93 02				
	"	Halliday Bros.	350				
					630 69	105	14 70
	21.	cash mint	500				
	"	y'r s. d., Goyer & Co.	139 46				
					639 46	104	14 77
	22.	Lee Co. b'k	56 40				
	"	S. Topp	33 17				
					89 57	103	2 04
	24.	cash express	1,000				
	"	y'r s. d., J. W. Thomas	111 50				
	"	S. Topp	32 35				
	"	Hess, Mayer & Co.	448 52				
					1,592 37	101	35 73
	25.	cash express			1,000	100	22 22
	26.	y'r s. d., C. H. Clifton	50				
	"	"	50				
	"	H. E. Hich	55 70				
					155 70	99	3 41
	27.	Lee Co. b'k	79 60				
	"	cash per express	1,000				
					1,079 60	98	23 50
		Forward			27,365 60		911 82

136 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.						
	By forward		14,410 61		357 13	
Dec.	16.	proceeds 13 b. c.	617 70	79	10 83	
	17.	5	91	78	1 58	
	18.	1	51 79	77	87	
	24.	22	1,080 98	71	17 04	
	25.	3	137 91	70	2 13	
	29.	9	414 35	66	6 07	
	21.	1	52 99	64	74	
	20.	26	1,296 76	75	21 60	
	29.	23	1,095 80	66	16 06	
	31.	18	896 94	64	12 74	
1885.						
Jan'y	3.	18	876 34	61	11 87	
	14.	3	118 08	50	1 31	
	20.	Lilly & Son s. d.	89 31	44	87	
	21.	proceeds 16 b. c.	763 12	43	7 29	
Feb'y	7.	J. Q. Robins s. d.	36 75	26	21	
Jan'y	29.	proceeds 40 b. c.	1,995 28	35	15 52	
	30.	13	595 95	34	4 50	
	31.	61	2,797 59	33	20 51	
Feb'y	3.	15	735 64	30	4 70	
Feb'y	18.	error sale Dec. 5, '84	9 85	90	18	
			28,134 74		522 75	

137 (3.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.				
	To forward		27,365 60	
Nov.	28.	y'r s. d., S. Topp	46 18	
	"	"	11 22	
	"	"	78 74	

	28.	Robinson & Co.	150				
	"	T. E. Gardner	34 41				
				320 55	97		6 90
Dec.	1.	Hinkle	185 20				
	"	Lee Co. b'k	66 54				
	"	Smith & Co.	30				
	"	S. Topp	12 62				
	"	cash by express	1,000				
				1,294 36	94		27 03
	2.	y'r s. d., Carhart Bros.		100	93		2 07
	3.	S. Topp	20 56				
	"	Clifton	50				
	"	S. Topp	18 62				
				89 18	92		1 32
	4.	Goar		179 70	91		3 62
	5.	Schleb, $31.25; Topp, $64.24	95 49				
	"	Clifton	150				
	"	cash express	1,000				
				1,245 49	90		24 90
	6.	y'r s. d., Lehman & Son	40 75				
	"	" S. Topp	40				
	"	" "	58 35				
	"	Bicker & Sons	150				
	"	Bridgeford & Co.	94 63				
				383 73	89		7 57
	8.	Fitzpatrick & Co.	245 46				
	"	Lee Co. b'k	365 51				
				610 97	87		11 79
	10.	cash express	1,000				
	"	y'r s. d., Simpkinson & Co.	248 50				
				1,248 50	85		23 57
	11.	Goar	28 54				
	"	"	93 51				
				122 05	84		2 28
	12.	Humbolt B. & W. Co.	200				
	"	Lee Co. b'k	171 29				
				371 29	83		6 84
	15.	Halliday Bros.	616 10				
	"	S. Topp	34 15				
	"	C. Clifton	50				
				700 25	80		12 44
	17.	cash mint		1,000	78		
				35,031 67			1,042 65

138 (3.)

Mess. Luke Cates & Co. in acc't with Allen, West & Bush.

1885. M'ch	—.	By forward		28,134 74			522 75
		Forward		28,134 74			522 75

139 (4.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

		To forward		35,031 67			1,042 65
Dec.	18.	acc't Meek & F., 28 Dec., '84		366 10	67		17 33
	"	cash per express	1,000				
	"	y'r s. d., Lee Co. b'k	114 53				
				1,114 53	77		19 06
	19.	"		22 49	76		37
	20.	F. McWhorter	95 85				
	"	"	34 15				
				130	75		2 17

	23.	cash express			1,000	72	16
	26.	s. d., Lee Co. b'k			112 75	69	1 72
	27.	yr s. d., Miller			100	68	1 51
	29.	S. Topp	61 60				
	"	Lee Co. b'k	46 80				
	"	Bank of P.	150				
					258 40	66	3 78
	31.	S. Topp			10 75	64	14
1885.							
Jan'y	2.	Robinson & Co.			150	62	2 07
	3.	Tryan & Co.			75	61	1 02
	6.	Freeman Bros.			51	58	66
	7.	W. S. Shields	319 10				
	"	Forcheimer & Co.	21 32				
					340 42	57	4 31
	9.	Meyer Bros. & Co.	121 94				
	"	Foss & S.	40 50				
					162 44	55	1 98
	10.	Peasley, G. & Co.			61 95	54	73
	12.	McWhorter	63 23				
	"	"	25				
					88 23	52	1 42
	14.	Schmidt & Z.	15 75				
	"	Makoss & Co.	32 22				
					47 97	50	52
	15.	Mansfield & Co.			62 29	49	68
	16.	G. K. Hopkins & Co.			111 70	48	1 18
	17.	A. & J. Plant	140 63				
	"	Edwin Porter & Co.	300				
					440 63	47	4 60
	19.	Ellis, B. & Co.	39 75				
	"	Granman & S.	30				
	"	Jno. Holland	15 20				
	"	S. Topp	91 40				
	"	"	7 60				
					183 95	45	1 34
	16.	Ballard			236	48	2 54
		Forward			41,160 46		1,127 88

140 (4.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
M'ch	—.	By forward			28,134 74		522 75
		Forward			28,134 74		522 75

141 (5.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
		To forward			41,160 46	--	1,127 88
Jan'y	21.	y'r s. d., Hess, M. & Co.			175	43	1 67
	23.	Jeffrey & Co.	150				
	"	Lee Co. b'k	143 04				
	"	Simmons & Son	272 15				
	"	Imbs & Co.	321 25				
					886 44	41	8 07
	24.	Lee Co. b'k			53 10	40	47
	26.	Gar	199 50				
	"	Norton & E.	914 78				
					1,114 28	38	9 40
	28.	Lee Co. b'k			144 92	36	1 15
	31.	cash register			500	33	3 67
Feb'y	2.	y'r s. d., Bartle & Co.			168 93	31	1 16

4.	S. Topp	33 15					
"	Kirkpatrick & Co.	68 24					
				101	39	29	65
5.	Norton & E.			100		28	62
2.	mdse.			88	21	31	61
6.	y'r s. d., Gardner	5 10					
"	" "	15 75					
				20	85	27	12
7.	cash register			250		26	1 44
9.	y'r s. d., Lee Co. b'k	155 59					
"	Bernheim Bros.	150					
"	"	100					
"	S. Topp	15 80					
"	Mun Bros. & Co.	118 31					
				539	70	24	2 87
10.	Callaghan & Co.			26	50	23	13
12.	Harbison & G.			75		21	35
13.	Norton & E.			405	84	20	1 80
18.	Bernheim B. & W.			160		15	53
19.	Lee Co. b'k			44	90	14	14
23.	Robinson	214 22					
"	S. Topp	14					
"	"	28 75					
				256	97	10	57
24.	D. Moriarty			185	82	9	37
26.	*pate* Luke Cates			30		7	65
"	mdse., bottle ink				60	"	
"	p. Cates, Nov. 27, '81			350		98	7 62
	Forward			45,838	91		1,157 48

141½ (6.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
	To forward			45,838	91	--	1,157 48
Feb'y	28. s. d., Jaffray & Co.			125		5	14
M'ch	5. S. Topp	24 06					
"	"	5 94					
				30			
"	interest			648	73		
				46,642	64		1,171 48
1885.							
M'ch	5. To balance due us			18,507	90		

142 (5.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
M'ch	—. By forward			28,134	74	--	522 75
	balance			18,507	90		
				46,642	64		522 75

142½ Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
M'ch	5. To balance			18,507	90	174	715 60
"	ins. & postage reg.			5	52	"	19
	6. y'r s. d., S. Topp			19		173	73
	9. "	13 70					
"	Compton	11 50					
				25	20	170	94

	10.	Topp	15 70				
	"	Hart, H. & Co.	47 67				
	"	Warren & Co.	177 43				
				240 80	169	9 01	
	11.	Buffman & Co.	164 70				
	"	Bloom, G. T. & Co.	150				
				314 70	168	11 72	
	13.	McCord & A.		100	166	3 69	
	16.	F. M. Goar		257 59	163	9 31	
	17.	Jno. H. Miller		200	162	7 20	
	18.	Topp, $20.75; Growman & S., 97.75		118 50	161	4 22	
	20.	S. Topp		92 97	159	3 25	
	21.	Holdich & T.		21 41	158	91	
	5.	S. Topp		2 75	174	08	
	23.	Holditch & T.	80 81				
	"	S. Phillip	100				
				180 81	156	6 24	
	25.	Lee Co. b'k		84 62	154	2 87	
	27.	Robinson & Co.	195 32				
	"	Throne	75				
	"	Topp	54 15				
				324 47	152	10 94	
	28.	Lee Co. b'k		67 31	151	2 25	
	30.	S. Topp	14 34				
	"	"	19 28				
	"	"	72 27				
				105 89	149	3 48	
Ap'l	4.	Meader	57 20				
	"	Ims & Co.	200				
				257 20	144	8 22	
	6.	Edelmith		83	142	2 62	
	"	Norton & E.		500 55	"	15 78	
	11.	S. Topp		16 30	137	49	
	13.	Wm. McCoy		200	135	6	
	16.	cash per reg.		200	132	5 87	
	17.	y'r s. d., McWhorter		48 62	131	1 40	
Aug.	26.	2½ % on 10,782, balance, less 123 b. c., estimated @ $45		269 55			
				22,248 76		833 01	

143 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.						
M'ch	9.	By Mobile st., 12	97 25	170	3 66	
Feb'y	10.	proceeds 2 b. c.	98 87	197	4 29	
	20.	17	784 62	180	31 36	
M'ch	6.	16	771 23	177	30 33	
	4.	1	44 44	171	1 71	
	5.	4	175 32	176	6 77	
	14.	7	338 27	165	12 39	
	21.	3	147 25	158	5 16	
	24.	1	50 13	155	1 72	
Ap'l	1.	3	137 70	147	4 48	
	8.	3	132 26	140	4 11	
Aug.	20.	47	2,161 15	6	2 88	
	22.	17	724 28	4	64	
		Forward	5,662 70		109 50	

144 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.					
Aug.	26.	To forward	22,248 76	--	833 01
		interest	725 51		
			22,972 27		833 01

	10.	Topp	15 70				
	"	Hart, H. & Co.	47 67				
	"	Warren & Co.	177 43				
				240	80	169	9 01
	11.	Buffman & Co.	164 70				
	"	Bloom, G. T. & Co.	150				
				314	70	168	11 72
	13.	McCord & A.		100		166	3 69
	16.	F. M. Goar		257	59	163	9 31
	17.	Jno. H. Miller		200		162	7 20
	18.	Topp, $20.75; Growman & S., 97.75		118	50	161	4 22
	20.	S. Topp		92	97	159	3 25
	21.	Holdich & T.		21	41	158	91
	5.	S. Topp		2	75	174	08
	23.	Holditch & T.	80 81				
	"	S. Phillip	100				
				180	81	156	6 24
	25.	Lee Co. b'k		84	62	154	2 87
	27.	Robinson & Co.	195 32				
	"	Throne	75				
	"	Topp	54 15				
				324	47	152	10 94
	28.	Lee Co. b'k		67	31	151	2 25
	30.	S. Topp	14 34				
	"	"	19 28				
	"	"	72 27				
				105	89	149	3 48
Ap'l	4.	Meader	57 20				
	"	Ims & Co.	200				
				257	20	144	8 22
	6.	Edelmith		83		142	2 62
	"	Norton & E.		500	55	"	15 78
	11.	S. Topp		16	30	137	49
	13.	Wm. McCoy		200		135	6
	16.	cash per reg.		200		132	5 87
	17.	y'r s. d., McWhorter		48	62	131	1 40
Aug.	26.	2½ % on 10,782, balance, less 123 b. c., estimated @ $45		269	55		
				22,248	76		833 01

143 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
M'ch	9.	By Mobile st., 12		97	25	170	3 66
Feb'y	10.	proceeds 2 b. c.		98	87	197	4 29
	20.	17		784	62	180	31 36
M'ch	6.	16		771	23	177	30 33
	4.	1		44	44	171	1 71
	5.	4		175	32	176	6 77
	14.	7		338	27	165	12 39
	21.	3		147	25	158	5 16
	24.	1		50	13	155	1 72
Ap'l	1.	3		137	70	147	4 48
	8.	3		132	26	140	4 11
Aug.	20.	47		2,161	15	6	2 88
	22.	17		724	28	4	64
		Forward		5,662	70		109 50

144 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
Aug.	26.	To forward		22,248	76	--	833 01
		interest		725	51		
				22,972	27		833 01

CREDIT.

1885.							
Aug.	26.	By forward		5,662 70	--	109	50
		balance down		17,309 57			
				22,972 27		109	50
1885.							
Aug.	26.	To balance due us		17,309 57			

E. & O. E.

145 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
Aug.	26.	To balance ac. rend.		17,309 57	--	546	23
Oct.	1.	cash per reg.		1,000	--	23	56
	8.	s. d., Jno. I. Adams & Co.		118 50	--	2	62
	13.	per register		1,000	--	20	89
	15.	s. d., F. M. Goar		149	--	3	05
	19.	per register		1,000	--	19	56
	22.	" mint		500	--	9	44
	26.	s. d., Norton & E.		148 38	--	2	66
	"	per mint		1,000	--	18	
	31.	s. d., Shelby & Topp		10 05	--		17
Nov.	3.	per mint		500	--	8	11
	5.	register		1,000	--	15	78
	4.	note, Brown & Brown		768 82	--	12	30
	11.	per mint	500				
	"	s. d., T. E. Gardner	50 30				
	"	Fletcher & Johnson	15 10				
				565 40	--	8	16
	12.	per mint	500				
	"	express	1,000				
				1,500	--	21	33
	14.	note, Norton & Elliott		284 13	--	3	91
	19.	per express		1,000	--	12	67
	24.	register	500				
	"	mint	500				
				1,000	--	11	56
	26.	express		1,000	--	11	11
	27.	s. d., Lee Co. b'k		28 28	--		30
Dec.	1.	per mint	500				
	"	register	500				
	"	s. d., Brown & Brown	386 50				
				1,386 50	--	13	87
	3.	S. Topp	58 55				
	"	"	36 13				
				94 68	--		91
	4.	per mint	500				
	"	register	500				
	"	s. d., Lee Co. b'k	200				
				1,200	--	11	20
	8.	per mint	500				
	"	register	500				
	"	F. M. Goar	43 81				
				1,043 81	--	8	81
	"	Lee Co. b'k		22 50	--		19
		Forward		33,629 62		786	29

146 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1884.							
Dec.	12.	By proceeds 1 b. c.		46 41	399	4	08
1885.							
Jan'y	31.	1		35 13	349	2	71
Aug.	22.	10		390 39	146	12	65

	25.	17		740 58	143	23	55
	26.	pro. n. e., Norton & Elliott		377 15	142	11	90
	"	" " " " "		377 16	142	11	90
	27.	proceeds 71 b. c.		3,176 49	141	99	51
	29.	3		127 99	139	3	95
Sept.	5.	6		247 37	132	7	25
	10.	1		40 83	127	1	16
	13.	3		127 07	124	3	50
	15.	1		42 98	122	1	17
	16.	1		37 03	121		99
	18.	1		38 22	119	1	
	"	4		211 94	119	5	61
	26.	1		37 25	111		91
	18.	1		46 94	119	1	24
Oct.	5.	3		139 88	102	3	17
	7.	2		93 61	100	2	09
	9.	3		137 87	98	3	01
	12.	1		52 38	95	1	12
	16.	17		781 40	91	15	79
	20.	3		130 33	87	2	51
	21.	3		134 49	86	2	56
	22.	2		87 27	85	1	64
	24.	2		98 78	83	1	83
	26.	2		89 72	81	1	62
	28.	4		189 70	79	3	34
	29.	4		162 03	78	2	81
	"	10		433 46	"	7	51
	"	1		45 73	"		80
	"	1		37 88	"		66
	"	2		103 50	"	1	80
	31.	2		86 70	76	1	47
Nov.	9.	1		41 26	67		61
	11.	19		798 76	65	11	54
		b. f.		9,745 68		258	96

147 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
		To b. f.		33,629 62	--	786	29
Dec.	10.	s. d., Withman, Gray & K.	25				
	"	Lee Co. b'k	175 40				
				200 40	--	1	60
	14.	cash per register		1,000	--	7	11
	17.	s. d., S. Topp	120 25				
	"	Brown & Brown	390 29				
				510 54	29	3	29
	18.	per register	1,000				
	"	s. d., High & Stone	178 43				
				1,178 43	28	7	33
	19.	S. Topp	16 30				
	"	High & Stone	79 57				
	"	Harralson & Co.	130				
				225 87	27	1	36
	21.	W. T. Adams		177 37	25		98
	24.	Harralson & Co.		100	22		49
	28.	Jno. H. Miller	150				
	"	S. Topp	15 70				
	"	"	47 25				
	"	Geo. Futchner	50				
				262 95	18	1	05
	"	Schmidt & Z.		7 60	18		03
	30.	S. Topp	9 25				
	"	"	10 80				
	"	"	36 55				
				56 60	16		20

	31.	S. Topp	23				
	"	"	54 29				
	"	"	40 80				
	"	"	26 83				
				144 92	15		48
1886.							
Jan'y	2.	F. Johnson	30 75				
	"	J. J. Feen	100				
				130 75	13		38
	5.	Capitol City C. Co.		110	10		24
	6.	T. E. Gardner	28 12				
	"	"	55 40				
				83 52	9		17
	7.	"	29 01				
	"	"	51 65				
	"	Lee Co. b'k	228 49				
				309 15	8		55
	13.	"	89 17				
	"	T. E. Gardner	53 44				
				142 61	2		06
	14.	Cady & V.		20 50	1		
				38,290 83			811 71

148 (2.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1885.							
		By b. f.		9,745 68	--		258 96
Nov.	13.	proceeds 2 b. c.		92 83	63		1 30
	18.	16		667 94	58		8 61
	19.	8		328 88	57		4 17
	20.	1		49 44	56		61
	26.	1		48 93	50		54
	21.	1		49 87	55		61
	24.	3		128 40	52		1 48
	25.	1		44 95	51		51
	"	7		295 77	"		3 35
Dec.	1.	3		123 05	45		1 23
	2.	16		652 11	44		6 38
	3.	10		438 97	43		4 19
	7.	1		47 80	39		42
	12.	42		1,813 34	34		13 70
	16.	3		111 71	30		75
	"	cash P. O. warrant		102 13	"		68
	18.	proceeds 8 b. c.		325 92	28		2 03
	26.	3		130 92	20		58
	24.	1		48 63	22		24
1886.							
Jan'y	2.	6		240 70	13		70
	7.	1		43 32	8		08
	15.	balance		23,291 15			
				38,822 44			311 12

Received this year	509	b. c.
Balance last year	123	"
	632	"
Credited in ac.	338	"
On hand	294	"

149 (3.)

Mess. Luke Cates & Co. in account with Allen, West & Bush.

1886.						
	To b. f.	38,290	83	--	811	71
Jan'y 15.	cash s. d, T. E. Gardner	24	28			
"	postage & ins. on reg.	6	74			
"	interest	500	59			
		38,822	44		811	71
Jan'y 15.	To balance due us	23,291	15			
Jan'y 15.	To balance	23,291	15	226	169	72
16.	cash s. d., Schmidt & Z.	141	89	225	7	10
June 2.	Allen, West & Co., bal'ce	1,757	41	88	34	36
Aug. 29.	interest balance	740	63			
"	comm. on deficit, say 598 b. c. @ 1.25	747	50			
		26,678	58		1,211	16

150 Mess. Luke Cates & Co. in account with Allen, West & Bush.

1886.						
Jan'y 16.	By proceeds 43 b. c.	1,744	99	225	87	25
15.	19	734	18	226	36	86
25.	28	1,109	31	216	53	23
28.	21	918	32	213	43	45
Feb'y 6.	8	336	11	204	15	23
11.	1	36	11	199	1	59
18.	31	1,216	02	192	51	89
25.	2	75	29	185	3	08
27.	26	1,120	90	183	45	57
M'ch 6.	6	210	41	176	8	21
12.	15	585	79	170	22	14
16.	27	1,131	05	166	41	72
22.	1	36	07	160	1	28
24.	1	42	71	158	1	51
25.	26	959	74	157	33	49
Ap'l 19.	2	71	86	132	2	11
23.	1	44	12	128	1	25
May 5.	1	37	09	116		95
10.	3	92		111	2	27
"	8	312	08	111	7	70
July 10.	13	491	59	50	5	47
29.	15	560	52	31	3	86
"	1	36	38	31		25
Aug. 19.	2	76	05	10		17
29.	balance trans. to Andrews, Cates & Co.	14,699	87			
		26,678	58		470	55

E. & O. E.
New Orleans, Aug. 29, '86.

Rec'd ---------- 519 b. c.
Sold ---------- 516

3 b. c. on hand.

151 "C."

Memorandum of Commissions Charged Luke Cates & Co. and Andrews, Cates & Co. on Sundry Statements from Dec. 17, '81, to Dec. 11, '86.

Aug. 23, '83.	Ch'ged Luke Cates & Co. 2½% comm. on advance as per agreement	$45	(which was ret'd.)
" 25, '84.	Ch'ged Luke Cates & Co. 2½% comm. on advance as per agreement	190 00	
" 26, '85.	Ch'ged Luke Cates & Co. 2½% comm. on advance as per agreement	269 55	
	Total commissions of 2½% ch'ged on adv.	$459 55	
Aug. 29, '86.	Ch'ged Luke Cates & Co. comm. on cotton not shipped as per agreement		$747 50
Dec. 11, '86.	Ch'ged Andrews, Cates & Co. comm. on cotton not shipped as per agreement		1,825
	Total commissions on cotton not shipped		$2,572 50

The charge of $45 on Aug. 23, '83, was returned of our own accord, as the advance was made late in the season, near September 1st, after which time we charge no commissions for advancing.

Exhibit "C" referred to in the annexed deposition of J. H. Allen this 12th October, 1887.

THEO. GUYOL, *Notary.*

152 "D."

Mess. Andrews, Cates & Co. in account with Allen, West & Bush.

1886.					
Aug. 29.	To bal. trans. from Luke Cates & Co.	14,699 87	104	339 73	
Dec. 11.	comm. on deficit as by agreement, say 1,460 b. c., @ $1.25	1,825			
	interest balance	338 57			
		16,863 44		339 73	

CREDIT.

1886.					
Oct. 1.	By proceeds 1 b. c.	32 15	71	50	
27.	" 2	65 91	45	66	
Dec. 11.	" balance	16,765 38			
		16,863 44		1 16	
Dec. 11.	To balance due Allen, West & Bush	16,765 38			

E. & E. O.
New Orleans, Dec. 11, '86.

Exhibit "D" referred to in the annexed deposition of J. H. Allen this 12 October, 1887.

THEO. GUYOL, *Notary.*

153 "E."

Memorandum of Interest Charged on Sundry Statements Rendered Luke Cates & Co. and Andrews, Cates & Co. from Dec. 17, '81, to Dec. 11, '86.

Date.	Amount.	No. days to Dec. 11, '86.	Interest.
Dec. 17, '81	$12 78	1,820	5 28
Jan'y 11, '83	127 99	1,430	40 75
Aug. 23, '83	186 50	1,206	50 28
Nov. 23, '83	106 79	1,114	26 55
Jan'y 4, '84	120 12	1,092	29 18
Ap'l 28, '84	286 15	957	60 95
Aug. 25, '84	212 40	838	39 52
M'ch 5, '85	648 73	647	93 46
Aug. 26, '85	725 51	473	76 27
Jan'y 15, '86	500 59	331	36 85
Aug. 29, '86	740 63	105	17 29
Dec. 11, '86	338 57		
Total am't int. chg.	$4,006 76	Am't comp. int. chg.	$478 38

On Jan'y 6, '82, there was a credit of interest, $1.18.

Exhibit E referred to in annexed deposition of J. H. Allen this 12 October, 1887.

THEO. GUYOL, *Notary.*

154 R. C. CATES, one of defendants, being first duly sworn, testified as follows, to wit:

Int. 1. What is your name, age, residence, & business?

Ans. 1. My name is R. C. Cates; age, 46 years; residence, Kossuth, Miss. I am not in any business now, except clerking, now.

Int. 2. Who are you clerking for?

Ans. 2. S. R. Stribbling, of Fulton, Itawamba county, Miss.

Int. 3. At what salary, if any?

Ans. 3. At thirty-five dollars per month.

Int. 4. When did you quit business?

Ans. 4. Made an assignment the 7th of December, 1886; I quit business then.

Int. 5. When did you commence business at Kossuth?

Ans. 5. I commenced business in 1865, in July. I commenced alone, but Major Wallace took an interest with me in the fall of 1865, and we continued business ten years. We quit business the

1st of January, 1875. I was out of business, I think, 4 years. I went into business with Mr. Andrews, I think, some time in 1879. We continued until the 7th of December, 1886, the date of the assignment.

Int. 6. What were the terms of the partnership of yourself and Andrews?

Ans. 6. There was no definite terms agreed upon so far as the time was concerned.

Int. 7. Please state fully the terms of the copartnership of yourself & Andrews.

Ans. 7. There was no written contract or terms between us. I put in two thousand dollars against a two-thousand-dollar stock of goods — Mr. Andrews, and we were to be equal partners.

155 Int. 8. What were the terms of partnership between yourself and Wallace?

Ans. 8. There was no written contract between us. Mr. Wallace, I think, put in two thousand or twenty-five hundred dollars against a stock of goods I had at that time. He didn't put it all in at once. He put it in at different times.

Int. 9. What was the result of the business of yourself & Wallace when you quit?

Ans. 9. I say we were successful—we made money.

Int. 10. How much?

Ans. 10. Well, we had a good deal on paper; I suppose between twenty and twenty-five thousand dollars' worth.

Int. 11. How much did you have in hand?

Ans. 11. I don't know. I can't answer that question. We had four or five thousand dollars' worth of cotton on hand; not a great deal of money.

Int. 12. Is that all you can tell me about the result of that business?

Ans. 12. No, sir; we went ahead and wound it up and collected a good portion of it.

Int. 13. Have you and Mr. Wallace ever had a final settlement?

Ans. 13. Yes, sir; we divided what we collected. I think it was between ten & twelve thousand dollars that was collected in cotton mostly.

Int. 14. Mr. Cates, have you any books or papers to show how much you and your partner, Mr. Wallace, received from that partnership?

Ans. 14. We have statements. I think the cotton was shipped to Allen, West & Co. mostly.

156 Int. 15. Do not the books of the firm show how much was collected & how paid out of the firm assets?

Ans. 15. No, sir; they do not.

Int. 16. How do you know, then, how much each partner received?

Ans. 16. Most of the debts that was due us was paid in cotton; the cotton was shipped and the proceeds, half of it, was placed to my credit and half to the credit of Mayor Wallace. The credit was

given with our houses in Mobile & New Orleans; it was not put on our books here.

Int. 17. What did you do with that collected in money—how was it divided & credited?

Ans. 17. It was divided equally between us. I suppose it was charged up to each one of us on the books.

Int. 18. In answer to 10th Int. you say we had a good deal on paper; I suppose between twenty & twenty-five thousand dollars. How much of that was collected?

Ans. 18. I couldn't say how much.

Int. 19. State about how much.

Ans. 19. A good portion of it was collected in cotton.

Int. 20. State what proportion was collected, whether in cotton or otherwise.

Ans. 20. Something over half of it.

Int. 21. Do not the books of said firm show how much was collected?

Ans. 21. I suppose they do.

Int. 22. Where are the books?

Ans. 22. At Kossuth, Miss.

Int. 23. Whereabouts at Kossuth, Miss.?

157 Ans. 23. The ledger, I think, one of them at the store and some of them at an old shop back of the store.

Int. 24. In whose possession or control are they?

Ans. 24. I suppose Major Wallace has the ledger; the others are there in the old shop. I don't think any one has them in charge particularly; think some of them are in Mr. Stribbina's store.

Int. 25. How has control or possession of them not in particular?

Ans. 25. There is no one that I know of.

Int. 26. Who has control, possession, or ownership of the shop alluded to?

Ans. 26. Major Wallace has ½ interest in it and I suppose Dr. Herman has the other ½. I turned over my half interest to Dr. Herman in my assignment; he is the receiver in it.

Int. 27. Did you turn over the books of Cates & Wallace to the assignee?

Ans. 27. No, sir.

Int. 28. In whose possession were the books of Cates & Wallace at the time of the dissolution of that firm & to whom did they belong?

Ans. 28. They were in the possession of Cates & Wallace; they belonged to Cates & Wallace.

Int. 29. To whom do they belong now?

Ans. 29. I suppose they belong to my creditors—that is, my interest in them.

Int. 30. Why, then, have you not turned them over?

Ans. 30. I didn't consider them worth anything.

Int. 31. Are you willing, then, to turn them over to the receiver on his demand?

Ans. 31. Yes, sir; all the interest that I have in them.

158 Int. 32. Did you not tell J. Q. Robins in Tupelo, a short time before the assignment, that you collected up nearly all the twenty or twenty-five thousand dollars of paper above referred to of Cates & Wallace?

Ans. 32. I remember now telling him that I collected a large portion of it, but I don't remember telling him any specified amount.

Int. 33. Did you not tell him that you collected nearly all of it?

Ans. 33. I don't remember.

Int. 34. Well, state in round numbers how much of that twenty or twenty-five thousand dollars was collected.

Ans. 34. I couldn't state. I suppose there was something over twelve thousand dollars.

Int. 35. From the time of the commencement of the business of Cates & Wallace up to the date of dis-olution how much was drawn out by each member, as well as you can recol-ect?

Ans. 35. There must have been five or six thousand dollars apiece we used out of it.

Int. 36. Do not the books show?

Ans. 36. I suppose they will.

Int. 37. What investments did you make of funds drawn from said firm during its ten years of continuance?

Ans. 37. I don't remember exactly. I built a residence, which I afterwards sold to Mr. Elgin. The improvements and all, I suppose, cost me something near three thousand dollars, includ-

159 ing ten or twelve acres of land at—we bought some land. I suppose we bought a half section from Mr. Whorley. I think we paid probably $500.00 for it; & I think we bought some land from Mr. Helburn. I think there was a half section. I don't remember what we paid for it; I think it was three or four hundred dollars. We bought a shop & lot—2-acre lot—in Kossuth, on which a shop is located refer-ed to above.

Int. 38. What became of those lands, besides the shop?

Ans. 38. The Helburn place, I think, we sold to Mr. Whorley, and my interest in the Whorley tract was turned over in the assignment above refer-ed to.

Int. 39. When did you sell your residence to Elgin, and was it on time or cash, and how much?

Ans. 39. I think I sold it in 1884. There was $750.00 cash & two hundred and fifty on time.

Int. 40. When was the time payment due?

Ans. 40. I think it was due in twelve months from the date of the sale.

Int. 41. Has that payment been made; and, is so, when?

Ans. 41. Yes, sir; it has been paid. It was paid about maturity, before the assignment.

Int. 42. Did anybody else have any interest of any kind in the business of Cates & Wallace besides yourself and Wallace?

Ans. 42. No, sir.

Int. 43. Did you use any of the money of your father in said business or borrow any money from him *in* which you so used?

Ans. 43. Yes, sir. I think it was about fifteen hundred dollars. I borrowed it to use in that business.

160 Int. 44. What interest were you paying on it?

Ans. 44. Ten per cent.

Int. 45. When did you pay him back, if at all, and how much?

Ans. 45. I don't know now when I paid it back. I don't remember when I paid it back. I don't remember now how much I paid him.

Int. 46. State when it was, to the best of your recollection, you paid him?

Ans. 46. I suppose that's been—I didn't pay it all at once; I paid it at different times; it's been 6 or 7 years, probably 8 or 10 years since I paid the last of it.

Int. 47. Did you have a business at Baldwyn, Miss.? Who was with you, when did it commence, & how long did it last?

Ans. 47. Yes, sir; I had a business at Baldwyn, Miss., with Mr. B. T. Jopplin; it must have commenced in 1868 or '9, to the best of my recol-ection; it must have lasted 3 or 4 years, to the best of my recol-ection.

Int. 48. State the terms of that copartnership.

Ans. 48. We were equal partners; we put in about twenty-five hundred dollars each to the best of my recol-ection.

Int. 49. Did anybody else have any interest in it?

Ans. 49. The- was no one that had any interest in it particular, but the money I put in the business I borrowed from my father.

Int. 50. What was the result of that partnership?

Ans. 50. We didn't make a great deal of money, as we were burned out; we would have made money had it not been for the fire.

Int. 51. State about what you made there.

161 Ans. 51. I don't recol-ect exactly what we made, but I think we made about one thousand dollars apiece. I sold out my interest to Mr. Oliver & paid my father every cent I got of the co-partnership. I got about thirty-five hundred dollars from Mr. Oliver for my interest in the business.

Int. 52. Did that discharge your debt with your father, or did you owe him more; &, if more, how much and when was it paid?

Ans. 52. No; that did not discharge my debt with my father; I owed him about five or six hundred dollars more, to the best of my recol-ection; this balance was paid at different times. I suppose it was paid about two years after the dis-olution—that is, it was finished being paid about two years after the dis-olution.

Int. 53. Were you engaged in the mercantile business at Corinth, Miss.; and, if so, with whom and upon what terms?

Int. 53. Major Wallace and myself had a branch business at Corinth with Mr. Shelton; I can't say what time; it was before Major Wallace and myself dis-olved business at Kossuth; it was about three or four years before that time. Major Wallace and myself had a half interest in the business; I think we put in fifteen or eighteen hundred dollars.

Int. 54. What was the result of that business?

Ans. 54. We lost about fifteen hundred dollars.

Int. 55. Did you have any other business?

Ans. 65. Yes; I was in business at Corinth with Mr. Huggins—J. L. Huggins.

162 Int. 56. State the terms of the partnership and the result of the business.

Ans. 56. We were equal partners. We put in, I think, about two thousand dollars apiece. We didn't make any money while I was in the business.

Int. 57. When did it begin & when did it cease?

Ans. 57. It began in 1882 and ceased the first of January, 1886.

Int. 58. How much did you get out of that firm at its dis-olution?

Ans. 58. About fifteen hundred dollars.

Int. 59. How much had you drawn out before?

Ans. 59. I drew out about—I think about one thousand dollars at different times before that.

Int. 60. Did you borrow any money from your father besides the fifteen hundred dollars you put in the Kossuth business & the twenty-five hundred dollars you say you put in the Baldwyn business; and, if so, when & how much?

Ans. 60. I borrowed money several times; I can't say exactly when. The last money I got was last year. The last I borrowed from him was last year—was one thousand dollars. I don't recol-ect the other times nor the amounts.

Int. 61. Is the thousand dollars all that you can now — besides the other two sums?

Ans. 61. Yes, sir; I think it is.

Int. 62. Did you give your note for each of these sums?

Ans. 62. Yes, sir.

Int. 63. Where are these notes?

Ans. 63. He has the last one—the thousand-dollar note, I suppose. The fifteen-hundred-dollar one & the twenty-five hundred-dollar one are destroyed, I suppose.

163 Int. 64. Have you paid any or all of the thousand-dollar note?

Ans. 64. No, sir; I haven't paid any of it, except I let him have a note on Mr. Casey, at Guntown, for four hundred dollars. I don't recol-ect when I let him have the note. I think it was in the spring of 1886.

Int. 65. Is that all that you let him have on that note?

Ans. 65. No, sir; I let him have a note on Mr. Webb. I think it was about five hundred dollars. I think it was in the spring of 1886.

Int. 66. Did you let him have anything else on that note?

Ans. 66. No, sir.

Ans. 67. Have you let your father have any money or notes only that you have already stated?

Ans. 67. No, sir.

Int. 68. Was Casey & Webb considered solvent at the time you let your father have said notes?

Ans. 68. I don't know anything about Mr. Casey, much. I sup-

pose he is solvent, & Mr. Webb I don't consider very solvent; he is very slow.

Int. 69. To whom were the Casey & Webb notes payable?

Ans. 69. R. C. Cates.

Int. 70. For what were they given?

Ans. 70. Casey notes were given for some Jersey heifers. The Webb note was given for a piece of land.

Int. 71. Do you know whether they have been paid or any part of them?

Ans. 71. Mr. Webb has paid about one hundred dollars on his. I don't know how much Mr. Casey has paid on his.

Int. 72. Did not L. L. Cates have an interest in those Gerseys?

164 Ans. 72. No, sir.

Int. 73. Where did the land lie that you sold Webb & where did you get it?

Ans. 73. It lies in Alcorn Co. I got it from Mr. J. W. Walker.

Int. 74. When did you get it from Walker & how much did you pay him?

Ans. 74. It has been six or eight years ago since I got it from Mr. Walker. I paid him, I believe, four hundred dollars for the land & afterwards sold 60 acres to Mr. Wright.

Int. 75. When did you sell to Wright & how much did you get for it?

Ans. 75. I sold to Wright about 5 or 6 years ago, to the best of my recollection, for about one hundred dollars.

Int. 74. How do you know Mr. Webb paid one hundred dollars on his note?

Ans. 76. He paid the money to me and I sent it to my father & got his receipt for it.

Int. 77. At the time Webb paid you who paid Webb's note?

Ans. 78. I had the note; he le-t it with me to collect—that is, my father.

Int. 79. Was it transferred in writing to your father?

Ans. 79. Yes, sir.

Int. 80. Where did Webb live at the time of the transfer?

Ans. 80. He lived in Alcorn county.

Int. 81. Where is that note now?

Ans. 81. I have it.

Int. 82. Where is the Casey note?

Ans. 83. I suppose my father has it.

Int. 84. Where was your father when you transferred him the Webb note?

165 Ans. 85. He was at my house.

Int. 86. When was it he gave you the note for collection—at the time of the transfer or afterwards?

Ans. 86. Afterwards.

Int. 87. How long afterwards?

Ans. 87. I don't recollect exactly; it was either in the summer or fall of 1886.

Int. 88. Please state, to the best of your recollection, when you got the thousand dollars from your father.

Ans. 88. It was some time in the spring of 1886; I don't recollect the time exactly.

Int. 89. How long after you got it before you transferred him the Webb & Casey notes, or was it at the time?

Ans. 89. It was at the time.

Int. 90. Did your father demand or ask it as security?

Ans. 90. No, sir.

Int. 91. Why, then, did you transfer them to him?

Ans. 91. I transferred them because I was in debt and wanted to secure him.

Int. 92. Did you then have apprehension of a failure of your business?

Ans. 92. No, sir.

Int. 93. What do you mean, then, by saying you did it because you were in debt?

Ans. 93. I didn't know how collections would be & didn't know whether I could collect enough to pay my debts or not.

Int. 94. You had some doubts about your being able to collect enough to pay your debts, did you?

Ans. 94. That was dependant upon the crop; if we had a short crop again I didn't know how I would come out.

166 Int. 95. Do you mean to say that your ability to pay depended upon your collecting your debts and the collection of your debts depended upon the crop?

Ans. 95. Yes, sir; to a great extent. If the crop was short we couldn't collect, and if we didn't collect we couldn't pay.

Int. 96. ——.

—. The crops were short and we failed in business.

Int. 97. Did you secure or did you propose to secure any other of your creditors; and, if so, who & how?

Ans. 97. No, sir; I did not.

Int. 98. Did you tell any of them—&, if so, who—that if the crops were short you would fail?

Ans. 98. No, sir.

Int. 99. Why were you not as good to your other creditors as your father?

Ans. 99. Because he was a great deal nearer to me than our other creditors.

Int. 100. Did you not represent to J. H. Allen, of Allen, West & Bush, of New Orleans, after this transaction with your father and in the summer of that year, that your house at Kossuth and that your house at Tupelo were both good and solvent, and that if they were not that you had plenty of property yourself to make them good, and that you would do so?

Ans. 100. I don't remember making any such statement to Mr. Allen. To the best of my recollection, I told him that I thought we had assets a plenty to pay, and that I was willing to work

167 at it, and I thought that if we could collect that we could pay, and that I would do the best I could.

Int. 101. When was it you made that statement to him?

Ans. 101. It was in the summer, I think, of 1886.

Int. 102. Did you express to him at that time any doubt of the then solvency of the firms or their future ability to pay?

Ans. 102. I didn't know at that time how much the Tupelo house was owing; I don't remember that I did.

Int. 103. Who bought the fall stock of goods for your firms in the fall of 1886?

Ans. 103. I bought them.

Int. 104. Did you not buy a large stock for both houses?

Ans. 104. No, sir; I bought light stocks.

Int. 105. Did you express any doubt to A. & J. Trounstein & Co. & J. & A. Simpkinson & Co., attaching creditors at the time you made the purchases from them sued for, of the solvency of your firms or their future ability to pay?

Ans. 105. No, sir; I didn't.

Int. 106. State what representations, if any, you made to said creditors of the financial condition of your firms.

Ans. 106. Never made any. They never asked any questions about it. I paid J. & A. Simpkinson some money at that time—a bill that the Kossuth house was owing them.

Int. 107. Did you make any representations to any of your creditors or Hill, Fontain & Co., of Memphis, during the fall business season of 1886 and up to the time of your failure, of the
168 financial conditions of your firms during said time?

Ans. 107. No, sir; I was never asked any questions about it.

Int. 108. Do you know how your firms were reported financially by R. G. Dunn & Co.?

Ans. 108. No, sir; I don't know that I do.

Int. 109. State what you do know on that subject.

Ans. 109. Well, it was my understanding that we were rated good.

Int. 110. How did R. G. Dunn & Co. get their information?

Ans. 110. I suppose they got it from the mercantile reporters.

Int. 111. Did you not know how your firms were reported by R. G. Dunn & Co. for the fall of 1886?

Ans. 111. No, sir; I did not.

Int. 112. When did you learn that you were rated good?

Ans. 112. Drummers have told me so frequently.

Int. 113. What do you mean by good?

Ans. 113. I suppose it's being able to pay.

Int. 114. Did any member of your firms or in person or by letter during the summer or fall of 1886 make any representations to any of your creditors of their financial conditions during said time?

Ans. 114. Not that I know of.

Int. 115. When was the firm of Luke Cates & Co. started at Tupelo, Miss., and when was said firm changed to Andrews, Cates & Co.?

Ans. 115. I think it was in the fall of 1880. It was changed in the spring of 1886, I think, to Andrews, Cates & Co.

Int. 116. What were the terms of the partnership of Luke Cates & Co. and of Andrews, Cates & Co.?

Ans. 116. Luke Cates had ½ interest & Cates and Andrews
169 ½ interest. I loaned Mr. Andrews one thousand dollars & we put in two thousand dollars. I don't know how much Luke put in. He said he had two thousand or twenty-five hundred dollars. The terms of Andrews, Cates & Co. were the same as Luke Cates & Co.

Int. 117. Did either member of the firm put in any more capital than what you stated above?

Ans. 117. I, as administrator of the estate of T. W. Mills, loaned the firm of Luke Cates & Co. the sum of two thousand dollars.

Int. 118. When did you loan this money?

Ans. 118. I think it was twelve months after we commenced business there; between 8 & 12; I don't remember exactly.

Int. 119. Whose note did you take for this money?

Ans. 119. I took Luke Cates & Co.'s note.

Int. 120. Who composed the firm of Cates & Andrews, Luke Cates & Co., and Andrews, Cates & Co.?

Ans. 120. R. C. Cates & D. Andrews composed the firm of Cates & Andrews; Luke Cates, D. Andrews, and R. C. Cates composed the firm of Luke Cates & Co., and R. C. & Luke Cates & D. Andrews composed the firm of Andrews, Cates & Co.

Int. 121. What were the terms of the dissolution of the firm of Luke Cates & Co.?

Ans. 121. R. C. Cates & D. Andrews sold out their interest to Luke Cates, or rather we withdrew. Luke was to pay us ten per cent. on the money that we had put in the business & assume the liabilities of the firm of Luke Cates & Co.

Int. 122. How and why was the firm of Andrews, Cates & Co. formed?

170 Ans. 122. At the time of the dis-olution Luke informed us that he had made arrangements with Allen, West & Bush, of New Orleans, to carry the balance that the firm of Luke Cates & Co. were owing them, which he said was between 5 & 6 thousand dollars, and he had made arrangements to run them through the summer. I think he told me he had made arrangements through Jno. Allen some way; he went to New Orleans and Allen, West & Bush had refused to furnish any further. I went to see Mr. Allen at New Orleans and I think he told me that they owed them between ten & twelve thousand dollars & I told him that we couldn't pay it, & he wouldn't agree to carry it unless Andrews & I would go back into the concern, & that is the reason we went back, & Mr. Andrews then went down to Tupelo & we formed a new firm under the style of Andrews, Cates & Co.

Int. 123. Was there any change in the terms of partnership of Andrews, Cates & Co. from that of Luke Cates & Co.?

Ans. 123. No, sir; there was nothing said about that.

Int. 124. Why was the change made in the style of the firm?

Ans. 124. That was a suggestion of Mr. Jim Allen—that is, he

said we had better go back into the concern—& they made the change after Mr. Andrews went to Tupelo.

Int. 125. Did Luke Cates & Co. or Andrews, Cates & Co. owe you, as administrator or otherwise, anything except the two thousand dollars you before referred to?

171 Ans. 125. No; they never owed anything but that & the interest on it.

Int. 126. In answer to Int. No. 122 you say you went to see Mr. Allen at New Orleans at that time. What representations did you make to said Allen of the financial condition of the house at Tupelo & at Kossuth and of your own financial ability?

Ans. 126. I told him that the Tupelo stock of goods invoiced between twelve & fourteen thousand dollars, is the best of my recol--ection, and the assets, according to a statement made out by Mr. Phillips, the book-keeper, amounted to about sixteen thousand dollars, as well as I remember, and the liabilities I didn't tell him anything about them. I don't remember exactly what I told him in regard to the Kossuth house. I think I told him that the assets would amount to between fifteen & twenty thousand dollars. I think that is all I remember telling him about that house. I may have told him that the Kossuth house didn't owe a great deal. I never told him anything in regard to my own financial ability. I don't think he asked me anything about it.

This Int. & answer is excepted to.

Int. 127. Fix as near as you can the date of his visit.

Ans. 125. I think it was in January, 1886.

Int. 129. At this time what were the liabilities of the Tupelo house & of the Kossuth house?

Ans. 129. I don't know what was the liabilities of the Tupelo house exactly, counting Allen, West & Bush's debt at what

172 they said it was, which they said was b tween ten & twelve thousand dollars, and we owed the Tishomingo Savings Institution at that time, I suppose, something near four thousand dollars. The balance of the liabilities, I suppose, were between ten & twelve thousand dollars. I didn't know what it was, though, at that time.

Int. 130. How much of the liabilities at that time were past due?

Ans. 130. Most of them were past due.

Int. 131. Was the debt to Allen, West & Bush & the debt to the Tishomingo Savings Institution past due?

Ans. 131. There was about 100 bales of cotton on hand, & I don't know whether the Allen, West & Bush debt was considered by them past due or not.

Int. 132. You don't know, then, whether the debts were past due or not?

Ans. 132. If they had rendered any statement up to that time I don't know it.

Int. 133. Do you not know that the business of Luke Cates & Co. at that time was in a very embarrassed condition?

Ans. 133. According to his statement about the assets & liabilities I thought we could pull through if we could collect.

Int. 134. How much cash was on hand?

Ans. 135. I don't know, sir.

Int. 136. State what you do know about it.

Ans. 136. I don't suppose there is much.

Int. 137. Didn't the firm of Luke Cates & Co. commence borrowing money soon after it was formed & continue to do so whenever it could until it failed?

173 Ans. 137. No, sir; not whenever it could. The firm borrowed money all along.

Int. 138. When did the firm ever fail to borrow when it could?

Ans. 139. I don't know that it ever failed to borrow; I don't know that it did.

Int. 140. What were the liabilities of the Kossuth house at that time?

Ans. 140. I suppose it was between 3 & 4 thousand dollars.

Int. 141. What were the solvent assets?

Ans. 141. I can't tell.

Int. 142. Was the Kossuth house then solvent?

Ans. 142. I considered it so.

Int. 143. How did you make your calculation?

Ans. 143. From the amount of assets that we had.

Int. 144. At what did you count the solvent assets?

Ans. 144. I counted the stock on hand & the real estate we had. I counted the stock at cost between 3 & 4 thousand dollars. I supposed, with proper management, there could have been 8 or 10 thousand dollars realized out of it. I think there could have been 8 or 10 thousand dollars realized out of the assets—that is, the stock, notes & accounts, real estate, &c.

Int. 145. To whom did the Kossuth house owe these liabilities?

Ans. 145. To J. & A. Simpkinson & Co., Gans, Arnold & Co. I think they owed Hill, Fontaine & Co. some. Perhaps we owed Bamberger, Bloom & Co. some. T. W. Dilworth—we owed him one thousand dollars. There may be others I don't remember.

Int. 146. Did the Kossuth house have any home creditors except Dilworth?

174 Ans. 146. No, sir; except we might have owed the Tishomingo savings bank something.

Int. 147. What were your individual liabilities?

Ans. 147. I suppose about fifteen hundred dollars—that is, outside of money that I had used belonging to the Mills estate.

Int. 148. To whom did you owe the fifteen hundred dollars?

Ans. 148. I owed J. M. Huggins, of McNairy county, Tennessee, one thousand dollars, and I owed my wife about two thousand dollars, which was an individual debt. There was some other little debts that I was owing around. I don't remember what the would amount to.

Int. 149. How did you make out the fifteen hundred dollars which you say you owed in answer to Int. No. 147?

Ans. 149. That was outside of what I owed my wife; there were other parties I owed that I can't remember just now.

Int. 150. Why did you say in answer to Int. No. 147 that your liabilities were about fifteen hundred dollars?

Ans. 150. I say that is about the amount outside of the two thousand dollars.

Int. 151. Did you say anything about the two thousand dollars in answer to that interrogatory?

Ans. 151. I don't know that I did.

Int. 152. Had it slipped your memory at that time?

Ans. 152. Well, I don't know that it had.

Int. 153. Why, then, did you not speak of it when I asked you what your individual liabilities were?

175 Ans. 153. Well, I intended to mention that.

Int. 154. Why didn't you do it, then, when I asked you about it?

Ans. 154. I was just giving my liabilities outside of that.

Int. 155. Were you asked what your liabilities were outside of that?

Ans. 155. No, sir; I don't know that I was.

Int. 156. Why, then, did you leave that out?

Ans. 156. Well, I intended to speak of it afterwards.

Int. 157. Why didn't you speak of it when I asked you the direct question?

Ans. 157. I hadn't come to that part of it.

Int. 158. How much money, if any, did you draw out of the Tupelo house?

Ans. 158. I drew out five hundred dollars, I think, at one time, I think in the fall of 1886, I think in November. They paid me the Mills note with interest in December, 1886. It took about three thousand dollars to pay this note. It was the 6th of December. I don't remember of anything else.

Int. 159. Please state exactly how you got the money on the Mills note.

Ans. 159. They sent it to me; Andrews, Cates & Co. sent it to me.

Int. 160. How did you get the five hundred dollars?

Ans. 160. Luke paid it to me.

Int. 161. What did he pay it to you on?

Ans. 161. I drew it out as part of my capital.

Int. 162. What did you do with the three thousand dollars?

Ans. 162. Most of it was paid to the heirs of the Mills estate.

Int. 163. Had not that note (the two-thousand-dollar note) due the Mills estate been paid off before that time?

176 Ans. 163. No, sir.

Int. 164. Had you not then made your final settlement, & had it not then been allowed?

Ans. 164. I had filed my annual settlement at that time. I had not been discharged as administrator. Mr. Stanley, my attorney, died last fall, & the thing stands open yet.

Int. 165. To what heirs of the Mills estate did you pay said

money, three thousand dollars, or any part thereof, and when and how much to each?

Ans. 165. I don't recollect to what heirs I paid said money or any part of it to. I don't know exactly when I paid Mr. Humphrey here one thousand dollars or more—something over one thousand dollars.

Int. 166. Do you swear that you paid any of this identical three thousand dollars received from Andrews, Cates & Co. to any of the heirs of the Mills estate?

Ans. 166. No, sir; I don't.

Int. 167. How was this three thousand dollars sent you?

Ans. 167. By Mr. Andrews' father, J. K. Andrews.

Int. 168. On what day did J. K. Andrews pay it to you?

Ans. 168. I don't remember the exact day; it was something near the time of the assignment.

Int. 169. Where were you when he paid it to you?

Ans. 169. I was at Kossuth, Miss.

Int. 170. State the date to the best of your recollection.

Ans. 170. It must have been about the 7 or 8 of December, 1886; I can't say exactly.

Int. 171. Where were you on the day the deed to your wife was filed in the chancery clerk's office of Alcorn county & on the day you acknowiedged the assignment?

177 Ans. 171. I was in Corinth, Miss.

Int. 172. Were you not in Corinth all that day?

Ans. 172. I left Corinth in the evening, I think, about 2 o'clock. I got to Corinth very early that morning, by sun-up.

Int. 173. Was it after your return home that day this money was paid to you or was it on the next day or the day previous to the 7th?

Ans. 173. I couldn't say exactly what day it was; it was about the time of the assignment.

Int. 174. State, according to your best recollection, whether it was paid to you before or aster the day you acknowledged the assignment.

Ans. 174. I think it was after the assignment it was paid to me.

Int. 175. What day did Mr. J. K. Andrews return from Tupelo to Kossuth?

Ans. 176. To the best of my recollection, it was about the 7th or 8th of December, 1886, & I can't say which day.

Int. 177. On what business did he go to Tupelo & when?

Ans. 177. He was staying down the part of the time with Mr. Andrews, his son. I can't say when he went.

Int. 178. How do you know that the three thousand dollars was paid J. K. Andrews for you?

Ans. 178. He told me that Mr. D. Andrews sent it to me.

Int. 179. You knew nothing about it until then, did you?

Ans. 179. I told them that I would have to have the money.

Int. 180. Is that all that J. K. Andrews said to you at that time about the money?

Ans. 180. I don't remember anything else.

Int. 181. When & who did you tell that you would have to have the money?

Ans. 181. I told Luke & Mr. D. Andrews so two or three different times, to the best of my recollection. I don't remember exactly.

178 Ans. 181. I don't remember exactly the time I told them. I can't state the date now.

Int. 182. Were you expecting the money about the time you received it?

Ans. 182. Yes, sir.

Int. 183. Will you be kind enough to state fully why you were then expecting it?

Ans. 183. I was because they owed it & I expected them to pay it.

Int. 184. Had you written or sent them any word to send it to you by J. K. Andrews or had they promised to do so?

Ans. 184. I told Mr. D. Andrews—he was up here a few days before the assignment; about the 1st of December—that I wanted the money. I don't recollect exactly what was said. I think he said he would try to get it up.

Int. 185. Did not Mr. Andrews then promise to send you the money in a short time?

Ans. 185. I think he did, to the best of my recollection.

Int. 186. Did he not promise to send it by his father?

Ans. 187. I don't think he did. If he did I don't remember it.

Int. 188. What did you then do with the identical three thousand dollars paid you by J. K. Andrews?

Ans. 189. I paid one thousand dollars of it to my wife that I was owing her, & I paid one thousand dollars to Mr. D. Andrews that I had used & I considered belonged to him, & I kept a thousand dollars of it to pay some of my debts & to live on.

Int. 190. It is not true, then, that you paid it to the Mills estate, is it?

Ans. 191. Not that identical three thousand dollars.

Int. 192. When did you pay your wife the thousand dollars?

179 Ans. 192. To the best of my recol-ection it was about the 8th or 9th of December; I don't recol-ect exactly.

Int. 193. Did you pay her one thousand dollars of this identical three thousand dollars?

Ans. 193. Yes, sir.

Int. 194. Did you pay D. Andrews one thousand dollars out of this identical three thousand dollars?

Ans. 194. Yes, sir.

Int. 195. When?

Ans. 195. I don't recol-ect the exact date. It was after he came back from Tupelo. It must have been near the 15th of December, 1886.

Int. 197. How and for what did you owe this money to D. Andrews?

Ans. 197. I had used money that belong- to him in the payment of this Mills debt.

Int. 198. State how it belong- to him.

Ans. 198. He had a ½ interest in the business that I took it out of—in the business of Cates & Andrews.

Int. 199. How much did you take out of this business for that purpose & when?

Ans. 199. I took out a thousand dollars at different times along the fall of 1886.

Int. 200. So that -- all you took out for that purpose?

Ans. 200. It was all that I used of his for that purpose.

Int. 201. How much money did you take out of the business of Cates & Andrews that you used in the Mills estate?

Ans. 201. I think it was something near two thousand dollars.

Int. 202. Did you make any entry on your books of the taking out of that money; and, if so, upon what book, & where is the book?

180 Ans. 203. No, sir; there was no entry of it made on the books.

Int. 204. Why not?

Ans. 205. I didn't think it was necessary.

Int. 206. Did you keep no cash account?

Ans. 207. We kept a cash account of the merchandise sales, & nothing but the amounts paid out for cotton, the merchandise sales, & the am't collected.

Int. 208. Did you keep no account of the amount of cash drawn out by each partner?

Ans. 208. No, sir; we just kept an open account on the books against each partner; usually we did keep a cash account against each partner.

Int. 209. Why, then, did you fail to make an entry of this large amount?

Ans. 209. This was proceeds of cotton that we would sell; we didn't collect much cash. I didn't think — was necessary to make an entry of it; the two thousand dollars wasn't all paid at once.

Int. 210. Did you not make an entry of the sales of cotton of the firm when you received the returns or at some time?

Ans. 211. We usually did.

Int. 212. Please state how many draws you made from said business in getting the two thousand dollars, & when they were made & the amounts at each time.

Ans. 212. Before I got the two thousand dollars there must have been 3 or 4 draws made, to the best of my recollection. These draws were made, some in October & some in November. To the best of my recollection, it was in October & November. I can't state positively the amounts drawn at each time. I suppose there was

181 something near 500 dollars drawn at each time.

Int. 213. How much of this two thousand dollars did you pay to the Mills estate, when, and to whom, and did you take vouchers for the same & file them with the papers of said estate?

Ans. 213. I paid it all to the Mills estate. It was at different times. I paid it to the heirs a good portion of it & to parties that had bought the interest of the heirs, & I took vouchers for the same, &

part of them was filed with the papers. I have the balance. I have those that are not filed.

Int. 214. From the vouchers filed in the papers, which I now hand you, and from those which you say you have, please examine & give the amounts paid out of said two thousand dollars & the names of the parties, the dates, & the number of the vouchers filed.

Ans. 214. I can't state exactly which amounts of these vouchers are paid out of that two thousand dollars. I had some money of my own that I used in paying out these matters. Paid part of voucher of J. T. Humphrey, clerk, of October 12th, 1886. I can't state what part. This voucher is for one thousand and eleven dollars & 51 cents. I think this voucher of C. E. Stanley for the sum of $25 *dollars* was paid out of this amount; date, November, 1883. After looking at the date of this last voucher to Stanley I say it was not paid out of this two thousand dollars. The reason I thought that voucher was one of them, I paid Mr. Stanley a fee for defending a suit of

Potts against Mills in regard to a quarter of land in Tippah
182 county. That is all that I can find that I paid on vouchers on file with the papers of the estate. Those that are not on file are as follows: Paid Fannie Willis one-h., $137.17, October, 1886; paid Caroline Smoot $152.00; date, October, 1886; paid J. K. Herman $100.00, October 13th, 1886; paid J. T. Mills $337.17, November 16th, 1886; R. T. Bynum, $237.17, November 10th, 1886; paid Jno. T. Humphrey, court cost, $29.00, October 12th, 1887; paid D. Andrews $391.50, the 18th of October, 1886. That is all. These last vouchers were dated in October, but were not all paid at their dates, but subsequently.

Int. 225. Can you state how much of your own money was used in the payment of these receipts not on file?

Ans. 225. I don't think there was any of my own individual money.

Int. 226. Was it all partnership money?

Ans. 226. Yes, sir; I think it was.

Int. 227. How did you make the calculation to ascertain how much you owed Andrews, which you paid him out of the 3,000 dollars?

Ans. 227. I suppose it was about 2,000 dollars I used that belonged to the firm of Cates and Andrews.

Int. 228. Did you guess at it or did you have any figures to go by? And, if so, tell me where you got the figures.

Ans. 228. I had some figures on paper showing the amount that I had taken out of Cates and Andrews' business.

Int. 229. What have you done with those figures?

Ans. 229. I don't know what has become of them now. I
183 had them on paper and don't know what has become of them. I suppose they was destroyed when I paid Andrews the thousand dollars.

Int. 230. Were the figures on a book or were they on a separate piece of paper?

Ans. 230. They were just on a piece of paper.

Int. 231. Did you not make those figures at the time you paid Andrews?

Ans. 231. No, sir; I kept them as I got the dif-erent amounts.

Int. 232. Wouldn't it have been better to have put them on your books?

Ans. 232. I don't know that it would. It was a private transaction between us.

Int. 233. In your answer to the 189th Int. you say, I kept a thousand dollars of it to pay some of my debts and to live on. How much and to whom did you pay your debts out of it and when?

Ans. 233. I don't remember now. I can't say. I paid my taxes out of it & I paid some hands that I had out of it. I can't state the amounts; I don't recol-ect; & I sent some of it to the Southern agricultural works for a gin I sold for them & had used the money. I sold it in the fall of 1886, and I paid some to my cook, and I have had a hand hired this year & have paid him along. I don't recol-ect the amounts; and I have used it for various other purposes. I can't state now.

Int. 234. How much did you send to the Southern agricultural works?

Ans. 234. Thirty dollars.

184 Int. 235. Have you a receipt for the tax that you paid & will you furnish us with the orig- or a copy to be made a part of your deposition?

Ans. 235. Yes, sir; I think so. Yes, sir, I will furnish you with the original or a copy.

Int. 236. How much cash have you now on hand or loaned out or anywhere subject to your orders?

Ans. 237. I have none loaned out. I don't know exactly how much I've got; suppose something over a hundred dollars. I can't state how much over one hundred dollars. I have none anywhere subject to my orders. There is a little matter in Mobile. I don't know whether it is subject to my orders or not; 'tis in the hands of the assignee of Baker, Lawler & Co.

Int. 238. How much cash has your wife now on hand or loaned out or subject to her orders?

Ans. 238. I don't know that she has any loaned out. I don't know how much she has of the thousand dollars I paid her. I don't know how much she has on hand. I can't state. I suppose she has something near $1,000.00. She has paid her taxes. I don't know how much she has. She has bought some goods.

Int. 239. Have you paid her any money or property in the last two years except the $1,000.00 and the property conveyed to her by your deed acknowledged Dec. 4th, 1886?

Ans. 240. Yes, sir; I let her have two notes on Allen Settle, a negro, for $125 apiece. I let her have a note on Mr. J. W. Savage for 300 dollars. I think there is nothing else of any kind.

Int. 241. Were these notes transferred to her in writing or how?

185 Ans. 241. Yes, sir; they were transferred in writing.

Int. 242. When did you transfer these notes to her?

Ans. 242. Dec. 4th, 1886.

Int. 243. What were these notes given for?

Ans. 243. One of them—the Allen Settle note—was given for land and the Savage note was given for a 5 or 6 acre lot in Kossuth.

Int. 244. About that time—a month before or a month afterward—did you assign or convey any accounts or notes or personal or real property or pay any money to any one not your mercantile creditors; and, if so, to whom, how much, when, and what was it?

Ans. 245. I think it was in November. Mr. J. R. Huggins & myself were partners in the stock business & had been since 1885. I sold him my interest in the stock on hand for $400 & took his note. He afterwards paid $200 on the note; it was before I made my assignment. I let Major Wallace have the note some time in November, 1886, for $200; this is all that I recol-ect now.

Int. 246. Did you have any of any such transactions with your father or father-in-law, as stated in above Int.?

Ans. 246. I was owing my father-in-law some money; he had my note for one thousand dollars borrowed money that I had given him in 1880 or 1881, and I sold him land for it; this was in October or November, 1886; this land lies in Alcorn county. On looking at the deed my memory is refreshed, & I now state the date of
186 the deed to be November the 23rd, 1886, & the deed conveys the following real estate: The N. W. ¼ of sec. 25, T. 2, R. 6; 55 acres off of the north side of the S. W. ¼ of sec. 25, T. 2, R. 6; N. E. ¼ of N. E. ¼ of sec. 26, T. 2, R. 6; S. E. ¼ of N. W. ¼ of sec. 27, T. 2, R. 6 east, &c. I paid my father-in-law two hundred dollars in money a week or so after that; this is all I let my father-in-law have. I did not let my father have anything of any character except what has already been mentioned. J. R. Huggins mentioned in answer 245 was my wife's cousin.

Int. 247. Did you make any sales, transfers, conveyances, or deliverys of any money, real or personal estate, or choses in action, owed by you or in which you were interested, to any one during the year 1886? And, if so, state what, to whom, & when, except that which you have already stated.

Ans. 247. I transferred Mr. McClamrock a note of Cates & Andrews for services rendered them during the years of 1885 & 1886, the balance on the note was between 4 & 5 hundred dollars, on J. C. Gibson. I transferred this note to Mr. McClamrock the 6th day of December, 1886. We also transferred another claim to Mr. Mathes, another young man, for services rendered at the same time, for something over $150 *dollars*, the 6th of December, 1886; this note was on W. L. Skinner; this is all I remember now. I let Mr. T. W. Dilworth have some notes belonging to Cates & Andrews in payment of a debt that Cates & Andrews owed him of
187 $1,000 *dollars*. There was one note on James Melvin for, I think, near $170 *dollars*, and a note on W. J. Mums for, I think, for $250 *dollars*; one on A. H. Webb for, I think, about $280 *dollars*, and three notes, I think, on Nelson Brown for, I think, about 12 bales of cotton, payable, I think, in one, two, & three years. I think this is all I transferred. I transferred these notes

to Dilworth the 4th of December, 1886, as well as I remember. I think this is all I conveyed as well as I remember.

Int. 248. Did you not sell some Jersies to a man by the name of Scales, of Brooksville, Miss.; & if so, when, what was he to pay you, & when did he pay you?

Ans. 248. Yes, sir; I sold some Jersies to Mr. Scales; I think it was in July or August, 1886; I can't say positively. I sold them for $760 *dollars*, as well as I remember. Yes, sir, he has paid me; I think in November, 1886. He didn't pay it to me; he paid it to Mr. D. Andrews, and Mr. D. Andrews paid it to me; Mr. Andrews paid it to me, I think, in the latter part of November.

Int. 249. Why was it paid to Mr. Andrews?

Ans. 249. It was paid in Mobile; Mr. Andrews was in Mobile; I think it was paid by Mr. Scales' brother, in Mobile.

Int. 250. Wasn't it in December that Mr. Andrews was in Mobile, & didn't he pay it to you the last time he was up to Kossuth before the assignment?

Ans. 250. No, sir; my recollection was that Mr. Andrews
188 was in Mobile in the latter part of November; that is my recollection; I suppose it was the last of November or the 1st of December, 1886; he paid it to me the last time he was up here before the assignment.

Int. 251. Where was that money when you put your name to the assignment?

Ans. 251. I don't know, sir.

Int. 252. What had you done with it?

Ans. 252. I had used it in different ways.

Int. 253. State how you had used it.

Ans. 253. I think there was $200 of it that I paid to J. M. Huggins, of McNairy county, Tennessee. I remember now about the balance of it; there was other parties that I paid that I don't remember.

Int. 254. At the time Mr. Andrews paid you the Jersey money did he pay you any more but the price of the Jerseys?

Ans. 255. I don't think he did.

Int. 256. How much money did you collect of the Mills estate besides that you say you let Luke Cates & Co. have & what did you do with it?

Ans. 256. As shown by my accounts in said cause, I received in all $11,108.56 *dollars*, which includes the amount that Luke Cates & Co. received.

Int. 257. Did you use any of said funds at any time in the business of Cates & Andrews?

Ans. 257. I suppose we did. I had the money & we would use it. Yes, sir; we used it in paying creditors of the firm & in buying cotton for the firm. I kept no account of the Mills estate on the books of Cates and Andrews.

189 Int. 258. Did Cates and Andrews pay all back to you that they used of the Mills money?

Ans. 258. I think they did.

Int. 259. Have you paid out anything on the Mills estate since the assignment was made?

Ans. 259. I don't think I have.

Int. 260. Do you owe the Mills estate anything?

Ans. 260. I owe Dr. Hermon some; I don't know how much. He had an interest in one of the shares. I think Major Wallace has an interest in one of the shares. That is all, I think, that I owe the estate.

Int. 261. If I understand you correctly, you had made good out of your own funds, before the assignment was made, the money that you had loaned of that estate to Luke Cates & Co.?

Ans. 262. Yes, sir; I suppose I did.

Int. 263. Then the firm of Luke Cates & Co. owed that amount to you, then, did they not?

Ans. 263. They owed that amount to me as administrator, is my understanding.

Int. 264. If they payed it you after you had paid the claim to the estate, who did it belong to, you or the estate?

Ans. 264. It looked to me like it belonged to me as administrator.

Int. 265. Do you owe that three thousand dollars to the estate still?

Ans. 266. No; I don't consider that I owed it to the estate.

Int. 266. Who did the three thousand dollars belong to after it was paid to you?

Ans. 267. I suppose it was my money or Cates and Andrews'.

Int. 268. Did you use it as your money and in the payment of your debts and purposes or not?

190 Ans. 269. Well, I suppose I did.

Int. 270. If it wasn't your money, why did you use it as yours?

Ans. 270. Because I thought I was doing right in using it that way.

Int. 271. What day did you sign the assignment?

Ans. 272. I think it was the 7th of December.

Int. 273. Who sent to Chattanooga for Mr. T. D. Young & when, and is he the attorney who drew up the assignment?

Ans. 273. Mr. T. D. Young, of Chattanooga, is the attorney that drew up the assignment. I don't know who sent for him; I didn't send for him.

Int. 274. Did you request anybody or did anybody ask permission to send for him, or did anybody tell you that they would send for him? State all you know on that subject.

Ans. 274. All that I know is that, to the best of my recollection, on the 6th of December, I think, I had a talk with Col. Taylor, at his office, in Corinth, about the money that we were owing him, and I think he said that he would send for him; that is my recollection. I suppose it was to come to some understanding about making arrangements to secure his debt; that is all I recollect; that was the sum and substance of the conversation.

Int. 275. What did you come to town on the 7th of December for so soon?

Ans. 275. I came to meet Col. Taylor. I think he said that Mr. Young would be down that night, as near as I recollect.

191 Int. 276. Did you not tell Mr. Young when you came to town that day that you came to make the assignment?

Ans. 276. No, sir; I don't think I did.

Int. 277. Did he not have the assignment wholely or partly written when you saw him?

Ans. 277. I don't remember now whether he did or not.

Int. 278. When did you assertain or conclude that your firms must fail?

Ans. 278. I never thought about giving it up until the 6th of December.

Int. 279. When did you conclude to make the assignment?

Ans. 279. I never fully concluded to make it until the 7th of December; in fact, I didn't want to make an assignment.

Int. 280. Why, then, did you do it?

Ans. 280. Mr. Young advised or said that was the best plan.

Int. 281. What was said about the failure or assignment when Mr. Andrews went up to see you the last time?

Ans. 281. There was nothing said about the assignment then. I don't remember now exactly what was said. I know we talked about it and we couldn't see which way to pull through unless we could get some more help.

Int. 282. Wasn't it the best opinion of both of you at that time from all you could see & know that your firms must fail?

Ans. 282. It looked that way unless we could borrow money; that was my best opinion.

Int. 283. Did you not prepare some deeds to be signed by Mr. Andrews or have them prepared and send to him to be signed by him to some lands to his wife?

192 Ans. 283. No, sir; I never prepared any or never had any prepared. I told him that if I was him that I would deed the lands that his father-in-law conveyed to him to his wife.

Int. 284. When did you tell him that?

Ans. 284. That was the 6th of December, 1886, to the best of my recollection. I told him that at Corinth, Miss.

Int. 285. Did Mr. Andrews do so?

Ans. 285. I don't know whether he did or not.

Int. 286. Do you know whether deeds were carried to Mr. Andrews to be signed for said lands?

Ans. 287. I don't think I do.

Int. 288. Do you know nothing on that subject whatever?

Ans. 288. Nothing only what I have already stated.

Int. 289. When did you become indebted to your father-in-law, J. M. Huggins?

Ans. 289. I think it was 1880 or 1881; probably 1880. I think perhaps it was 1880.

Int. 291. State what it was for, &, if for borrowed money, how much, & to whom it was payable.

Ans. 292. It was for borrowed money, for one thousand dollars. It was payable to J. M. Huggins. It was a note. It was drawing 6 per cent. interest. I borrowed the money, I think, in 1880.

Int. 293. Had you never paid any on it before you made him a deed to that land?

Ans. 293. Yes, sir; I think I had paid the interest up to the first of January, 1885.

Int. 294. What did you do with that money?

Ans. 294. I don't remember now. I used it in different ways.

Int. 295. Did you use it in business of Cates and Andrews?

193 Ans. 295. No, sir; I don't think I used it in the business of Cates and Andrews.

Int. 296. Was there any one else on the note but you?

Ans. 296. No, sir.

Int. 297. Where was your father-in-law when you made the deed to that land?

Ans. 297. He was in McNairy county, Tennessee.

Int. 298. Who brought the deed to the chancery clerk of Alcorn Co., Miss., to be filed for record?

Ans. 298. He sent it by me.

Int. 299. What do you mean by his sending it by you?

Ans. 299. I mean I went up there & saw him & made the trade with him. I then came back & made the deed, delivered it to J. M. Huggins & took up my notes, & he sent it by me to have it recorded.

Int. 300. Where did you deliver it to him at?

Ans. 300. At Gravel Hill, McNairy county, Tennessee.

Int. 301. Did you tell him that you couldn't pay him the money?

Ans. 302. Yes, sir; I told him that I couldn't pay him the money.

Int. 303. State how you became indebted to your wife—all about it.

Ans. 303. It was for money that her father gave her, and she let me have the money.

Int. 304. When did she let you have it?

Ans. 304. I think it was in 1867 or 1868 when I first got it.

Int. 305. How much did you get from her at that time or any other time?

Ans. 305. It was 1,050 dollars; that's all that I got from her at that time. I never got any from her at any other time.

194 Int. 307. You say it was in 1866 or '67?

Ans. 307. I said in 1867 or '68.

Int. 308. Did you give her a note?

Ans. 308. No, sir.

Int. 309. What did you do with the money?

Ans. I invested in some lands.

Int. 310. Describe the lands.

Ans. 310. I don't believe that I can do that. I afterwards sold the lands and invested in more. They were in Alcorn county; I think about 68 acres. I paid 1,000 dollars for it. I took the deed in my name. I sold the 68 acres. I sold 60 acres for 1,800 dollars, and

the other 8 I sold for 150 dollars. I invested some of this in other lands in Alcorn county, to the best of my recollection. It was twelve or fifteen hundred dollars. Part of it was the S.W. ¼ of sec. 24, T. 2, R. 6, and all of the N.W. ¼ of sec. 24, T. 2, R. 6, except 20 acres in the S.W. cor. of said quarter and a ½ interest in 50 acres — the W. side of the N.W. ¼ of sec. 7, T. 2, R. 7, and a ½ interest in S. E. ¼ of sec. 19, T. 2, R. 7, except 20 acres lying and being in the N. W. corner of said quarter.

Int. 311. When did you purchase the 68 acres?

Ans. 311. I think it was in 1868. I'm not positive.

Int. 312. What did you do with the money you got from your wife until you invested it in the 68 acres?

Ans. 312. I used it in my business and traded on it. I don't remember what I used it for exactly.

Int. 313. How do you know, then, that it was the money you got from her that you invested in the 68 acres of land?

195 Ans. 313. It was the money that I owed her. I don't say that it was the same identical money.

Int. 314. You mean, I suppose, that you owed her about the amount you invested in that land?

Ans. 315. Yes, sir; I suppose so.

Int. 316. When did you make the next purchases of land that you before described?

Ans. 316. It was at different times. I rec-on it was in 1871 or 1872, probably; perhaps some of it was after that time.

Int. 317. From the time you sold the 68 acres of land until it was reinvested in land what did you do with the money that you sold the 68 acres for?

Ans. 317. Well, I used it in trading on it.

Int. 318. Well, can you swear that you reinvested in the last lands described any of the identical money that you sold the 68 acres for?

Ans. 318. I can't swear that it was the identical bills. It was the money of hers that I was using.

Int. 319. Please tell us how do you know that her money was invested in those lands or other lands or in your business?

Ans. 319. Because I owed it to her—that amount of money.

Int. 320. Did you keep the money that you borrowed from her separate from your other money?

Ans. 320. No, sir; I didn't.

Int. 321. If you didn't, then, keep it separate from other moneys, how can you swear what particular money went to pay for any particular property?

Ans. 322. I don't know whether I can answer that question or not.

Int. 323. Why can't you answer it?

Ans. 323. Well, I don't understand the question. In answer to Int. No. 321, the question being explained, I say I can't

196 tell which money was invested.

Int. 324. Did you give your note to anybody for this thousand dollars you say you borrowed from your wife?

Ans. 324. No, sir.

Int. 325. Was it paid to you or paid to your wife & by whom?

Ans. 325. It was handed to her in cash by her father.

Int. 326. How much did you owe your wife on the 4th of December, 1886, & how did you make the calculation of the amount you owed her?

Ans. 326. I owed her the thousand dollars and the interest on it at 10 per cent. interest. I think I owed her something near twenty-five hundred or two thousand dollars.

Int. 327. In answer to 240th Int. you say you let your wife have two notes, one — Allen Settle and a note on J. W. Savage. Was that in part payment of the thousand dollars you say you got from her in 1867 or 1868?

Ans. 327. Well, that is the way I considered it. I didn't consider the Savage note worth over a hundred dollars.

Int. 328. What exemption did you receive for yourself?

Ans. 328. One hundred & 60 acres of land, 2 horses, 2 cows and calves, 4 hogs, all I had; no oxen; my household & kitchen furniture of 250 dollars. I think it would bring 250 dollars if it was sold.

Int. 329. What did the improvements, if any, that you put on the lands you let you wife have cost?

Ans. 329. There hasn't been a great deal of improvements put on those lands.

Int. 330. What did the lands you let your wife have cost you when you purchased them?

Ans. 330. The E. ½ of S. W. ¼ of sec. 24, T. 2, R. 6, & the N. W. ¼ of sec. 24, T. 2, R. 6, except 20 acres, cost me six hundred
197 & sixty dollars. The 10 a of — described in the deed cost me thirty dollars, I think, was the amount; also a ½ interest in the 50 acres described in said deed cost me one hundred and twenty-five dollars; a 1½ interest in a 1-acre tract described in said deed cost me five dollars; a ½ interest in the S. E. ¼, sec. 19, T. 2, R. 7, except 20 acres, cost me two hundred & thirty dollars, making in all one thousand and fifty dollars.

Int. 331. Look at the assessment-roll & state what said funds were assessed at, according to the assessment-roll of 1883.

Ans. 331. I have examined said assessment-roll, as requested, and find the lands assessed at $1,211.00 *dolla-s* total.

Int. 332. What *is* the land conveyed by you to J. M. Huggins, in consideration of $800, by deed dated November 23rd, 1886, cost you?

Ans. 332. To the best of my recollection, about $1,538.

—. Please examine the assessment-roll of Alcorn county for 1883 & see what said land is there assessed at.

Ans. 333. I have examined said assessment-roll and find said land assessed at $1,315. Since this land was bought there has been a large decline or depreciation in real estate. There has also been a decline since the assessment of 1883, and a large portion of the land is worn out. I don't think it *is* worth over $800 in cash at the time I sold it to J. M. Huggins.

Int. 333½. You say in answer to a previous int. that *that* J. H. Allen told you when you was in New Orleans in January, 1886, that Luke Cates & Co. owed Allen, West & Bush somewhere between ten & twelve thousand dollars. Do you remember the
198 exact amount, and do you remember how Mr. Allen arrived at the amount of the account?

Ans. 333½. He told me it was between ten and twelve thousand dollars, & then he got up a statement of the account, & he estimated the cotton that we had on hand with him; he estimated what he thought the cotton would bring. After deducting what he estimated the cotton at, as well as I recol-ect, he told me that Lake Cates & Co. would owe his firm about, to the best of my recollection, $11,000.

Int. 334. Did you go to New Orleans to see Mr. Allen soon after the failure of your firms?

Ans. 334. Yes, sir; I went to see him in the latter part of December, 1886, I think.

Int 335. You remember having a conversation with him while there in reference to the failure of your business?

Ans. 335. Yes, sir.

Int. 336. Did you tell Mr. Allen in that conversation that you had drawn out of the Tupelo business some time before the assignment about $2,000 to pay what you owed the heirs of the Mills estate, and that you had not drawn out anything else from said business?

Ans. 336. As well as I can remember, I told him about drawing out the two thousand dollars, or about that, but I don't remember telling that I had drawn out nothing else. Yes; I think, to the best of my recollection, I told him that I had drawn out $2,000 to pay the heirs of the Mills estate, but I don't remember telling him that I had drawn out nothing more.

199 Int. 337. Why did you tell him two thousand when you now say in your deposition that you got three thousand?

Ans. 337. It was two thousand that I had loaned as administrator to the firm of Luke Cates & Co.

Int. 338. Why did you tell him that you had drawn it out some time before the failure, when you now say in your deposition that you did not receive it until after signing and acknowledging the assignment?

Ans. 338. Well, it was drawn out by Mr. D. Andrews before the assignment.

Int. 339. Why did you tell him that you drew it out to pay the Mills heirs when you now state in your deposition that you paid it to your wife—to Mr. D. Andrews—& reserved a thousand dollars of it for yourself & to pay some of your debts?

Ans. 339. Well, the money that I had used to pay the Mills heirs was used out of the firm of Cates and Andrews, and I considered that part of it belonged to Mr. Andrews, and I thought I did right to pay him.

Int. 340. Was not Mr. D. Andrews, to whom the thousand dollars was paid, a partner of Luke Cates & Co. & Andrews, Cates & Co., & liable for the debts of said firm?

Ans. 340. Yes, sir.

Int. 341. Please refer to cash book of Andrews, Cates & Co. & marked on back "cash Luke Cates & Co.," on page 341, and explain the entry Dec. 6th by R. C. Cates at sundry times, three thousand dollars.

Ans. 341. I have examined the entry and can't explain why it was made that way.

Int. 342. Was the $3,000 paid you at sundry times or was it paid you all at once?

Ans. 342. It was paid to me all at once.

200 Int. 343. On same page of said cash book, date 6th of December, 1886, I see an entry by Luke Cates: "Self, on 4th inst., $1,000 *dollars;*" examine & explain that entry.

Ans. 343. I have examined said entry and cannot explain it.

Int. 344. What rate of interest did you charge yourself with the settlement with the Mills estate, if any?

Ans. 344. I didn't charge myself with any interest in said settlement.

Int. 345. Did you ever report as administrator of said Mills estate to the court the tran. of the $2,000 to Luke Cates & Co.?

Ans. 345. No, sir; I reported in each annual settlement or account made to the court as cash on hand.

Int. 346. Where did you get the $2,000 you say you let Luke Cates & Co. have of the Mills estate, & how much money belonging to said estate had you on hand at the time you made this loan to Luke Cates & Co., and how long had you had it on hand?

Ans. 346. It was the proceeds of the sales of some cotton belonging to the Mills estate. I collected debts & rents for said estate in cotton. Said cotton was shipped to Baker, Loll & Co., at Mobile, & I gave Luke Cates & Co. a draft on Baker, Loll & Co. & they gave me their note for the $2,000.

Int. 347. How was such cotton shipped? In your name individually or in your name as administrator, & how was the draft given?

Ans. 347. The most of the cotton was marked T. W. M., & I shipped it in my individual name, not as administrator; the draft was given in my name individually. I was shipping cotton to Baker, Lawler & Co. along from the time Mills died until
201 I paid this to Luke Cates & Co., and don't know which of the shipments that this $2,000 was paid out of, & therefore can't say definitely how long this identical $2,000 was on hand.

Int. 348. What was done with the note that you took from Luke Cates & Co. for this $2,000, and where is it now?

Ans. 348. It is destroyed. It was destroyed when this money was paid to me. I destroyed it.

Int. 349. From what time was it that your firms or either of them began to be pressed by their creditors?

Ans. 349. I can't say about the firm at Tupelo—Luke was running that—and I can't say about that. The hard pressure came in the spring of 1886, when myself & Mr. D. Andrews sold out the Tupelo business to Luke; on that pressure we had to go back into the business.

Int. 350. What was the particular cause of your making the assignment? Were your firms, either of them, or yourself as an individual at that time been pressed, or had you been pressed during that fall by your creditors, or did you anticipate pressure by your creditors?

Ans. 350. We wasn't able to pay was the cause—we wasn't able to pay our debts at maturity. Yes, sir; we had been pressed during the fall of 1886, and we were being pressed at the time we made the assignment.

Int. 351. Were you not afraid that you would be attached by some of your creditors?

Ans. 351. If our paper had gone to protest I think we would have been attached, & I saw that *I* paper would go to protest, and
202 I saw that we couldn't meet it without borrowing more money from my friends and I didn't want to do it.

Int. 352. You say in answer to a previous interrogatory that you did not want to make an assignment. What was your plan of arranging your business or what was the plan you preferred to making an assignment?

Ans. 352. My plan was to call a meeting of the creditors and make a statement of our business and try to get a compromise.

Int. 353. Who dissuaded you from this plan?

Ans. 354. Well, Mr. Young said he thought it was best to make an assignment & that we could get a better compromise afterward *after*.

Int. 355. This, then, was the reason you made an assignment instead of having a called meeting of your creditors?

Ans. 355. Yes, sir; I acted on his advice.

Int. 356. Did not your two partners, Mr. Luke Cates & Mr. D. Andrews, concur with you that a called meeting of your creditors was the best way of arranging your business, and were they or either of them consulted about the assignment & the preferences to be made therein before it was drawn & signed & acknowledged by you?

Ans. 356. I think they did concur with me in having a called meeting of our creditors. Mr. Andrews & I had a talk the 6th of December, 1886, and we decided that if we had to fail that we would try to secure the Tishomingo Savings Institution & S. W. Gardner first. In some way at that time we hadn't decided how we
203 would secure them, and we hadn't decided when Mr. Andrews left here on the evening of the 6th of December whether we would make an assignment or try to go ahead. This was the last conversation that Mr. Andrews & I had about the matter before the assignment was drawn up & acknowledged by me.

Int. 357. Was Mr. Luke Cates consulted at all?

Ans. 358. No, sir; he wasn't present at the conversation.

Int. 359. Is it not a fact, Mr. Cates, that you came to town (to Corinth) on the morning of the 7th of December, 1886, very early, & you and Mr. Taylor & Mr. Young had a conference & decided on the assignment, & that you then gave Mr. Young directions about preparing it, and that it was then in Corinth drawn & signed and

acknowledged by you while Mr. Andrews & Mr. Luke Cates were both at Tupelo, & Mr. Young then took the assignment & went down to Tupelo to get Mr. Andrews & Luke Cates to sign it, & do you not know that they both objected to signing it?

Ans. 359. I can't say that is all true. I came to town that morning—very early on the morning of the 7th of December, 1886—and I had a talk with Mr. Young and Col. Taylor at Col. Taylor's office, who is president of the Tishomingo Savings Inst. We were all there together, and, as well as I remember, Col. Taylor said that he did not know which would be the best way to fix it; that he had left the matter with Mr. Young; said he thought that would be the best plain to make an assignment & was governed by his advice in the matter, and then I gave Mr. Young some directions how I wanted it prepared. I told him that I wanted the creditors of Cates & Andrews to be paid out of the assets of Cates & Andrews, and that I
204 wanted to prefer the Tishomingo Savings Institution & S. W. Gardner first & then in the order in which they appear in the assignment. It was then drawn up, signed, & acknowledged by me in Corinth, while Mr. Andrews & Mr. Luke Cates were in Tupelo, and Mr. Young then took the assignment and, in company with Mr. Smith, one of the assignees, went down to Tupelo to get Mr. D. Andrews & Luke Cates to sign the assignment. I do not know anything about Mr. Luke Cates & Mr. D. Andrews objecting to sign the assignment.

Int. 360. Is it not a fact that Mr. T. D. Young told you that you had better make Allen, West & Bush one of the preferred creditors, in order to keep Jno. Allen off you or off the assignment; that Allen, West & Bush were disposed to litigate assignments unless they were preferred, or words to that effect?

Ans. 360. I don't rem-ber, but, to the best of my recollection, Mr. Young advised me to prefer Allen, West & Bush, as they were disposed to litigate assignments, or words or something to that amount. I don't think he told me anything about John Allen.

Int. 361. Who was Mr. T. D. Young, and what connection did he have with the Tishomingo Savings Institution, if any?

Ans. 361. My understanding was that he was attorney for the Tishomingo Savings Institution.

Int. 362. Was Col. Taylor, the president of the Tishomingo Savings Institution, present when Mr. Young gave you the advice about making the assignment?

Ans. 362. I can't say now whether he was in the room or not; can't say positively. He was in the room while we were advising very little. The assignment was drawn in the back room of his bank & Mr. Taylor was in the other room.

205 Int. 363. Is it not a fact that Col. Taylor sent for Mr. Young at Chattanooga to come to Corinth in order to advise with him & you about securing the debt due from your firm to the Tishomingo Savings Institution, & was he not the attorney for the Tishomingo Savings Institution in advising with you about the debt, and so recognized by Col. Taylor, the president of said institution?

Ans. 363. This is my understanding.

Int. 364. Please state, as best you can, the total amount of liabilities of the firms of Cates & Andrews & of Andrews, Cates & Co. and yourself as an individual on the 6th of December, 1886.

Ans. 364. Between forty-five & fifty thousand dollars, I suppose.

Int. 365. Now, will you please give, best you can, the value of the assets of these firms and yourself individually?

Ans. 365. About $21,000, exclusive of the notes and accounts of the Tupelo firm of Andrews, Cates & Co.

Int. 366. If you can, state the rental value of the land conveyed to your wife & that conveyed to J. M. Huggins in November and December, 1886.

Ans. 366. The land conveyed to J. M. Huggins is not in cultivation, only about 20 acres. I suppose the 20 acres would rent for about 50 dollars. There is a large amount of that not in cultivation, nor hasn't been for several years; is worn out. That part of it in sec. 24, 2, 6, heretofore described, would rent for about 50 dollars; that in 19, 2, 7, heretofore described, would rent for about 50 dollars.

The 50 a. heretofore described lies mostly in Tuscumbia
206 bottom; is not in cultivation; is worth about 10 dollars.

Int. 367. Who has the control & management of the lands conveyed in these two deeds this year?

Ans. 367. My wife has control & management of her part of it, and I as agent of J. M. Huggins has control of his part. Mr. Huggins told me to rent any part of his that I could and account to him for the rents.

Int. 368. Was it before or after you made the assignment that you paid J. M. Huggins this 200 dollars in money?

Ans. 368. It was after the assignment.

Int. 369. How long after?

Ans. 369. I suppose 8 or 10 days after.

Int. 370. The notes you say in a previous Int. that you transferred to various parties on the 6th of December, 1886. Was that before or after *that* the time that you was in town and had the consultation with Mr. Andrews?

Ans. 370. I think it was in the morning before.

Int. 371. Did you ever hear Mr. Luke Cates say what he did with the 1,000 dollars that he drew out of the Tupelo house on the 6th December, 1886?

Ans. 371. I don't know when he drew it out. I heard him say that he took out $1,000 and paid to father, but I don't know when he took it out.

Int. 372. Examine the cash book of Andrews, Cates & Co. before referred —, page 341, & see what date the $1,000 is charged to him.

Ans. 372. It is charged on the 6th by the following entry: "Luke Cates, self, on 4th inst., $1,000."

Int. 373. After the assignment did you ever make any effort at a compromise or settlement or arrangement of your business or
207 to procure the money for such purpose; and, if so, from whom?

Ans. 373. Well, Mr. J. H. Allen, of New Orleans, is the only one that I ever spoke to about it that I remember of. I have been asked several times if I was go- to try to make any arrangements. I think I told Mr. Allen that I wanted to get the matter arranged in some way, & he asked me what my chances was, and I told him that I thought I could get my father to help me some, & he said that if he was in my place he would not get my father mixed up with it, or something to that amount. I think then I told him that I thought I could get Col. Taylor to help us, though I hadn't spoken to Col. Taylor in regard —. I don't mean that I hadn't spoken to Col. Taylor. He said that he didn't think that I did right in preferring Taylor to him.

Int. 374. Wasn't the object of your visit to Mr. Allen to New Orleans to get him to make some deductions in his claim and to assist you in compromising your other debts?

Ans. 374. I suppose that was the object.

Int. 375. Don't you also remember about the time you went to New Orleans to see Mr. Allen to have had a conversation with his attorney, J. Q. Robins, with reference to the settlement of your indebtedness?

Ans. 375. I think I do.

Int. 376. In that conversation did not you and Mr. Robins make figures on the amount of your liability and your assets, and after making the figures did you not tell him that you was going
208 to try to make arrangements to compromise the matter; that you thought your mercantile creditors would all, with the exception of but a few firms, make large and liberal reductions and compromise on more liberal basis with you, and that you was sure Col. Taylor would make you a liberal compromise and assist you if Allen, West & Bush & Dr. Gardner would do so, and that you wanted to see Dr. Gardner and was going to Fulton to see your father to see if he wouldn't help you, & that you was going in a few days to New Orleans to see Mr. Allen to see what his firm would do, and that you would be glad for him, the said Robins, to do anything he could for you, & that you would be glad if he would write to Mr. Allen for you?

Ans. 376. As well as I remember, I think that was the sum and substance of the conversation.

Int. 377. Did you not after that go to Fulton to see your father & to New Orleans to see Mr. Allen?

Ans. 377. Yes, sir.

Cross-examination:

Int. 1. Did you ever consult with Col. Taylor or Mr. Young in reference to this compromise business that you have just been speaking of after making your assignment?

Ans. I think I had a conversation with Col. Taylor about the matter. I don't remember having any conversation with Mr. Young.

Int. 2. What was the purport of your conversation with Col. Taylor on this subject & when was it?

209 Ans. I couldn't say when the time was exactly; it was some time in December, after the assignment. I can't recollect the purport of the conversation now, all of it. As well as I can remember, I told him that I was going to New Orleans to see if I could get Mr. Allen to help me in the matter in any way. I think I told him also if I couldn't get Mr. Allen to do anything that I didn't see any use in trying to get the matter arranged. Col. Taylor didn't propose to make any compromise of his claim. I don't remember him telling me he would assist me in any way.

Int. 3. Did Col. Taylor or Mr. Young ever advise you to make a compromise with your creditors? If so, when?

Ans. If they did I don't remember it.

—. Did Col. Taylor ever authorize you to say to any of your creditors or to their attorneys that he would assist you in effecting a compromise with your creditors of your indebtedness?

Ans. No, sir; I don't think he ever did.

Int. 4 X. Then what you have said in reference to what you thought you could get Col. Taylor to do for you in the way of a compromise was mere supposition on your part, was it?

Ans. Yes, it was supposition. The reason I thought so he has always been a friend to me.

Int. 5 X. Do you mean to say in answer to Int. 355 that the object of your assignment was to effect a compromise with your creditors when you said in said answer that the reason you made an assignment instead of having a called meeting of your cred-

210 itors that you could get a better compromise after making an assignment?

Ans. X. Well, I acted on Mr. Young's advice there; he said he thought that was the best plan.

X Int. 6. Best plan for what?

Ans. Well, the best plan to get a settlement, I suppose.

Int. 7 X. Do you mean to say that this assignment was made for the purpose of getting a compromise out of your creditors or for the purpose in said assignment expressed?

X Ans. It was made the way the assignment expresses it was the way.

Int. 8 X. Did you ever read or hear that assignment read?

X Ans. I heard it read; I don't remember reading it myself.

X Int. 9. Does it express a purpose of being executed for the purpose of compromising with your creditors?

X Ans. I don't think it does.

X Int. 10. Then do you say that it was made for the purpose of effecting a compromise with your creditors?

X Ans. 10. No; I can't say that it was made for that purpose.

X Int. 11. Did not Mr. Young say that the best plan to prefer your creditors as you desired was to make an assignment, and not the best way to get a compromise was to make an assignment, as related by you in interrogatory number 354?

Ans. X. I don't remember; I told Mr. Young what I wanted to do, & he said the best plan was to make an assignment; this is as well as I can remember.

Int. 11 X. What did you tell Mr. Young that you wanted to do?

Ans. I told him that I wanted to secure Col. Taylor's debt, & Dr. Gardner's first, as well as I can recollect.

X Int. 12. Was Luke Cates and D. Andrews a party to the
211 conversation about the object of the assignment, or did either of them have anything to do or say in that matter?

Ans. They were not present.

X Int. 13. Then all this matter in reference to the conversations with Mr. Young about compromises, &c., was carried on by you individually, was it?

Ans. I say that they wasn't present when we had this conversation.

X Int. 14. Did they or either of them know, when they signed and acknowledged this assignment, anything about these conversations that you say you had with Mr. Young?

Ans. Well, I don't suppose they did, for I never saw them; I don't know what they knew about it; if they knew anything some one else must have told them.

X Int. 15. Was Mr. Luke Cates or Mr. D. Andrews a party to any of the efforts you say you made to effect a compromise after your assignment, or was it done by you individually?

Ans. I went to New Orleans myself and D. Andrews & myself talked about it several times—about trying to get the matter arranged in some way.

X Int. 16. Then this effort on your part after the assignment to effect a compromise with your creditors was not done in persuance of any scheme formed by your firm in which the assignment was used as an instrument in carrying out any such scheme, was it?

X Ans. No, sir.

X Int. 17. Which one of the firms used the money you got from the Tishomingo Savings Institution and for which you now owe
212 it and for which you preferred it in your assignment?

X Ans. Luke Cates & Co. used the money, part of it, & Andrews, Cates & Co. used the rest.

X Int. 18. State whether or not the assignees in your assignment were in possession under said assignment prior to the levy of any attachments that was levied on either of the houses and prior to the levy of the writ of sequestration.

X Ans. J. K. Herman, one of the assignees, was in possession of the Kossuth business, consisting of the store, together with the notes, goods, & books of account. As to the Tupelo property, Mr. F. G. Smith, the other assignee, informed me on his return from Tupelo that he was in possession *from Tupelo* before the levy of the writ of sequestration or attachment.

This answer excepted to as hearsay.

X Int. 19. State whether or not you know if the said F. G. Smith; if yea, what is his business qualifications and as to his honesty, uprightness, and integrity?

— Ans. Yes, sir; I know him. I have known him for ten or 15

years. He is considered to be a correct business man; he is considered an honest, high-tone gentleman.

— Int. —. State whether or not D. Andrews and Luke Cates knew what disposition you was going to make of the $3,000 you drew out of the firm of Andrews, Cates & Co. on the 6th of December, 1886.

X Ans. I suppose they did.

X Int. 20. State, then, what reason you gave for drawing the money out to them.

213 X Ans. They owed it to me as administrator, & I told them that I was compelled to have it.

Re-examination:

Int. 379. What is F. G. Smith's financial condition & what was it at the time of the assignment?

Ans. 379. He is and was a man of small and limited means.

Int. 380. Could he pay his debts?

Ans. 380. I don't think he could. I think he would pay if he could.

Int. 381. In the conversation you had with Mr. T. D. Young on the day he prepared the assignment & you signed it, did you not tell him that you wanted to have a called meeting of your creditors and compromise with them, and did he not tell you that you had better make an assignment & that you could then get a better compromise?

Ans. 381. I think I did tell him that, and he said he thought the best plan was to make an assignment, and my recollection is that he told me that I could then get a better compromise.

Int. 382. How much did you owe the Mills estate at the time you got the $3,000 from Andrews, Cates & Co.?

Ans. 382. I can't state the exact amount, but I suppose between 2 or 3 hundred dollars. I think it was due to Major Wallace.

R. C. CATES.

214 One of the defendants, D. ANDREWS, being first duly sworn, testified as follows:

Int. 1. Give your name, residence, and occupation.

Ans. 1. David Andrews, Kossuth, Miss. I hav-n't any occupation now; formerly a merchant.

Int. 2. Are you one of the defendants in this cause?

Ans. 2. Yes, sir.

Int. 3. What connection did you have with Andrews, Cates & Co., Luke Cates & Co., and Cates & Andrews, if any?

Ans. 3. First, I had $\frac{1}{3}$ interest with Andrews, Cates & Co., Luke Cates & Co., and $\frac{1}{2}$ interest with Cates & Andrews. I was a partner in all these firms.

Int. 4. When & how did these firms quit business?

Ans. 4. December the 7th, 1886; made an assignment.

Int. 5. What were the assets & liabilities of the firms at the time they made an assignment?

Ans. 5. Liabilities was about $42,000 of Andrews, Cates & Co.

and about $4,000 of Cates & Andrews; can't say for certain. Including everything, good & bad, their assets was about $72,000 of Andrews, Cates & Co., and including land and everything, good and bad, of Cates & Andrews it was, I think, somewhere near $30,000. I can't say for certain.

Int. 6. Please state how you arrived at the assets of the two firms, & state the real cash value of the assets of the two firms Dec. 7th, 1886.

Ans. 6. I get at it now the best I can from memory, & I can't say positively that they are right. I state the cash value of Andrews, Cates & Co.'s assets at about $26,700. I can't state about the
215 Kossuth business, as I hav-n't had charge of that business for a year. Mr. R. C. Cates had been managing that for the last year. I arrived at the value of the Tupelo house as follows: The stock of goods at $8,500; house, $2,500; books, $15,000; a piece of land, $500, and live stock, $200. We had stock in the Tupelo Compress Co. of $300, and cash on hand, as shown by cash book, $60. This is the best I can remember. This makes a total of $27,060 instead of $26,700, as stated above.

Int. 7. Don't you think that you have put in the notes & accounts and the stock of goods at more than their cash value?

Ans. 7. No, sir; I don't think I have. At the time, with our own management, I thought we could get that out of it.

Int. 8. When did you first conclude or determine that your firms must fail?

Ans. 8. I didn't know it really until the evening of the 7th of December, 1886. I was at Corinth on the 6th, and Mr. Cates, R. C., talked the matter over as to what would be best to do, and we then decided that we would consult Terry Young, and we didn't get to any decision at all that night, when I left here, and, as I had to go home that night, I left it with Mr. R. C. Cates to determine.

Int. 9. Where was Mr. T. D. Young when you were here, on the 6th of December, 1886?

Ans. 9. He was at Corinth.

Int. 10. Did you and Mr. Cates have a conference with him on the 6th?

Ans. 10. Yes, sir.

216 Int. 11. Where & who else was present, if any one?

Ans. 11. It was in Col. Taylor's back room of the bank of the Tishomingo Savings Institution; D. Andrews. There was no one else present.

Int. 12. Who sent for Mr. Young to come from Chattanooga to Corinth?

Ans. 12. Col. Taylor told us that Terry Young would be here about that time. He said that he had wrote him on some business, & that he would be here on business.

Int. 13. When did Col. Taylor tell you that?

Ans. 13. I think that was on the morning of the 6th. I think Mr. Young was then at the hotel, but hadn't come up in town. We commenced this talk on the morning of the 6th of December.

Int. 14. What time was it that you had the conference with Mr. T. D. Young?

Ans. 14. It was some time about 9 o'clock. I think it was between 9 & one o'clock in the day, and I don't know whether we talked with him later in the day or not.

Int. 15. What was the result of your conference with Mr. Young?

Ans. 15. We decided at the close of our talk with him that we would make an assignment, as that was the best we could do, & after that we hated — do that, & I thought if there was any chance to avoid it I would rather do it. Mr. Cates went home that evening, and before he left he & I had a talk with ourselves, & I told him that I objected to an assignment, but told him that when
217 he came back that night whatever he decided to do to let me know by Mr. Young coming down to Tupelo the next evening.

Int. 16. Was it not yours & Mr. Cates' plan of settling your business affairs to have a called meeting of your creditors & see what you could do in the way of a settlement or compromise of your debts?

Ans. 16. Yes, sir; that was our idea if we could do it without being attached; I thought it best if we could do it, but we were afraid to commence anything of that kind, for we were afraid we would be attached.

Int. 17. Did not Mr. Young dissuade you & Mr. Cates from taking that course, & tell you that you had better make an assignment?

Ans. 17. Well, I don't — that he did. He told us if we could call a meeting of our creditors that it would be best for us without being attached.

Int. 18. Was Mr. Young the attorney for the Tishomingo Savings Institution?

Ans. 18. I don't know that he was.

Int. 19. When & by whom was the assignment presented to you for your signature & acknowledgement?

Ans. 19. On the evening of the 7th of December, about sunset, in the office of Andrews, Cates & Co., Tupelo, Miss., by T. D. Young and the assignee, F. G. Smith.

Int. 20. Who else was present when you signed it? Was Luke Cates present?

Ans. 20. He was, but no one else, I think.

Int. 21. Did you or Mr. Luke Cates either object to signing the assignment?

Ans. 21. No, sir.

218 Int. 22. Did not Luke Cates tell you and Mr. Young that he didn't want to sign it, and thereupon Mr. Young told him that R. C. Cates had signed it, and if you and he did not that you would be attached, or words to that effect?

Ans. 22. No, sir; I don't remember anything of that kind at all.

Int. 23. What else did you & R. C. Cates talk about when you were in Corinth, on the 6th, besides making assignment?

Ans. 23. I don't remember anything that we did talk about.

Int. 24. Did not Mr. Cates tell you that you had better make a deed of your land to your wife?

Ans. 24. Yes, sir.

Int. 25. State what was said on that subject.

Ans. 26. He said in case we failed that it would be taken away from me, & that I had no right to apply it to my debts. That was the argument he used.

Int. 27. Did you refuse to make the deed?

Ans. 28. I had the deed made out & refused to acknowledge it.

Int. 29. Who made the deed out?

Ans. 29. Terry Young.

Int. 30. How much land was conveyed in that deed & what became of that deed?

Ans. 30. I think there was 301 acres.

Int. 31. What did Mr. Cates say, if anything, about having made a deed to some land of his to his wife?

Ans. 31. He said that he had done it.

Int. 32. What became of the deed that Mr. Young wrote conveying your land to your wife?

Ans. 32. I considered it worthless, & I may have destroyed it. I don't know where it is now.

219 Int. 33. Did you sign it?

Ans. 33. No, sir.

Int. 34. What, if anything, was said between you & Mr. R. C. Cates on that day about $3,000 cash on hand with the firm, Andrews, Cates & Co.?

Ans. 34. I don't remember that anything was said about it on that day.

Int. 35. What became of that cash?

Ans. 35. It was turned over to R. C. Cates—$3,000.

Int. 36. By whom, & when?

Ans. 36. I think it was on the 8th of December, 1886, by my father being down there, & I sent it up by him on the 8th. I suppose he delivered it on the same day.

Int. 37. Where was that $3,000 on the 6th of December, 1886?

Ans. 37. I had taken it home with me.

Int. 38. When?

Ans. 38. It was on the 6th, as well as I remember. A portion of it was carried up on the 6th; a part of it was already there. Luke had promised R. C. Cates to let him have $3,000, and I agreed to it; to raise him $300 by the 1st of December. In order to get this money I thought it was best to take money home, so that we wouldn't spend it; and, as well as I can remember, there were nineteen hundred & 88 dollars that I took up to my house first. Luke took this money out of the safe, put it in an envelope, sealed it, & handed it to me. It was sealed when I got it. I never opened the envelope. This was about the last of November or the 1st of December.

220 I took the money to my dwelling-house. There was a ticket made against me for this money by the book-keeper, as he did not know who to charge it to. On the day of the 6th of December I told Luke we must have enough money, according to our

promise, to make out this $3,000 that we had promised R. C. Cates and took enough that day to make out the balance of the three thousand. The balance, with the first of the $3,000, was charged to R. C. Cates. The ticket for $1,988 ought to have been taken up, as it was included in the amount charged to R. C. Cates, but the clerk failed to take up the ticket.

Int. 39. What time on the 6th of December was this money taken out—this balance?

Ans. 39. I think it was in the afternoon.

Int. 40. Were you not in Corinth in the afternoon of the 6th?

Ans. 40. Yes, sir; I was. I was mistaken about this money being taken out on the 6th. It was on the 7th of December instead of the 6th; it was in the evening of the 7th; it was, as well as I remember, about one or two o'clock in the afternoon.

Int. 41. Where was that balance of the $3,000 at the time you signed the assignment?

Ans. 41. I carried it home.

Int. 42. What time did you carry it home?

Ans. 42. It was before the mail came; it was about 3 or 4 o'clock in the afternoon.

Int. 43. When & where did you hand your father the $3,000 to deliver to Mr. R. C. Cates, & what instructions did you give him, if any, in reference thereto?

221 Ans. 43. It was on the morning of the 8th of December, at my house, in Tupelo, with instructions to hand it to Mr. Cates.

Int. 44. What other money, if any, did you get from Andrews, Cates & Co. on the 7th of December, and on what account?

Ans. 44. I think I got 50 dollars. There was 700 dollars sent up here to Corinth to Col. Taylor, with instructions to place 650 dollars to Andrews, Cates & Co.'s credit and 50 dollars to the credit of D. Andrews and pay W. J. Andrews 50 dollars and charge to my account—D. Andrews. I don't know the exact date, but several days before we made our assignment I was up here to see Col. Taylor, and in looking over my account he had me charged with 50 dollars that he had sent W. J. Andrews, and had entered none to my credit. When I explained to him how I intended to get this 50 dollars credit he said he had misunderstood my letter some way and had given Andrews, Cates & Co. the full credit of 700 dollars. He then referred to my letter and said that he was mistaken*ed*, and I thought I had given Jeff. Stone the same directions to charge me with 50 dollars and Col. Taylor 650 dollars, but when I examined my account I found he had charged the full 700 dollars to Col. Taylor, & I got this 50 dollars then to pay that debt. I owed between 25 & 30 dollars taxes on land, and I think I got 30 dollars to pay that. I think that is all; if there is any more I don't remember it.

Int. 45. At what time did you get this 50 & 30 dollars from Andrews, Cates & Co.?

222 Ans. 45. I think it was on the 7th of December, 1886, between ten and twelve o'clock.

Int. 46. What did you do with the fifty dollars & when?

Ans. 46. I handed it to Col. Taylor, president of the Tishomingo Savings Institute. I don't remember the date; it was some time after I came up here about 5 or 6 days ago, I think.

Int. 47. I see an item on cash book of Andrews, Cates & Co. marked on back, "Cash, Luke Cates & Co.," page 341, an entry in this language: "December the 6th, 1886, by expense trip D. Andrews to Mobile, twenty-five dollars." Explain that entry.

Ans. 47. That expense was for my trip to Mobile. I think I went to Mobile on the night of the 3rd of December, 1886.

Int. 48. Was this money paid you—the 25 dollars—on the 6th of December?

Ans. 48. I came back to Tupelo on the morning of the 4- of December from Mobile. I went to Mobile on the 3rd, stayed there the 4th, left Mobile on the night of the 4th, and must have gotten to Tupelo on the morning of the 5th. No, sir; the money was handed me before I went to Mobile & charged to me when I came back.

Int. 49. How did it happen that it was not charged on the fifth instead of the 6th, or why was it not charged to you the date you got the money?

Ans. 49. Well, the 5th was Sunday, I am satisfied, and it is frequently the case that when a man starts off on a trip that way & not knowing what the expenses will be the amount of money that he carries away may not be all used & it is not charged to him until he comes back.

223 Int. 50. When did you pay your taxes—twenty-five dollars?

Ans. 50. I paid that on the 6th; borrowed the money from Col. Taylor; promised that I would return it to him.

Int. 51. What, then, did you do with the twenty-five dollars charged on the cash book to you as "paid taxes on to-day, 25 dollars," and when?

Ans. 51. I paid it to Col. Taylor, president of the Tishomingo Savings Inst., at the same time I paid him the 50 dollars before referred to, and when they charged that I told them that was money that I was replacing that I had borrowed to pay my taxes.

Int. 52. Where was this 75 — you have just referred to in the previous Int. when you signed the assignment?

Ans. 52. I suppose it was at my house—I mean my residence in Tupelo.

Int. 53. When did you take it to your house?

Ans. 53. Some time that day, I reckon.

Int. 54. Then, in the light of the explanation you have given us of the 50 & 25 dollars, the two entrys on cash book and page before referred to in the following language: "Dec. 6, by D. Andrews, paid taxes on to-day, 25 dollars, & by D. Andrews, paid T. S. I., for Will. Andrews," are erroneous and false entrys, are they *are they* not?

Ans. I think those entrys are correct and true according to the explanation above.

Int. 55. In answer to previous interrogatories have you not sworn that both of those items of money were paid to you in person on the 7th of December?

Ans. Yes; I have.

Int. 56. How, then, can you now say that said entry on the
224 cash book showing that said money was paid to the T. S. I. and paid for taxes on the 6th of December is correct & true?

Ans. I think it was a mistake in the book-keeper in wording it.

Int. 57. How about the dates, if it's charged to you as gotten on the 6th, when in fact you got it on the 7th; is that true or false?

Ans. I think that is a mistake in the book-keeper. I think it ought to have been dated on the 7th, is my notion about it.

Int. 58. How, then, if it is a mistake in the book-keeper as to dates and the language that ought to be used in making the entrys can you say that the entrys are correct?

Ans. They may be correct; all except the dates. I don't know about that.

Int. 59. Please refer to the ledger of Andrews, Cates & Co., page 373, account of D. Andrews, and see if said 75 dollars is not there charged to you as of the 6th.

Ans. Yes, sir; 'tis charged that way.

Int. 60. Please explain, if you know, what became of the $3,000 paid to R. C. Cates out of the business of Andrews, Cates & Co.

Ans. I don't know what became of all of it. I suppose about a month after our trouble Mr. Cates asked me to come down to his house; he wanted to talk with me; and, after giving me a lecture about turning in my land and everything I had, he told me that he had used some money that he had collected at Kossuth that be-
longed to the firm of Cates and Andrews to pay some of his
225 individual debts. He said the Mills estate, I think, and as ½ of it was mine he said he felt that he ought to pay me as much as a thousand dollars, as I needed it to live on, and it was my impression at the time that it was a part of this $3,000, though I am not positive that he told me that it was. This is all I remember now about the $3,000 *dollars*. He paid me the $1,000.

Int. 61. What did he say to you about turning your land in?

Ans. He said he thought that I ought not to have done it, as it belonged to my wife.

Int. 62. What do you mean by turning it in?

Ans. By putting it in the assignment.

Int. 63. What has become of that $1,000?

Ans. I have used it to pay my expenses.

Int. 64. How much have you got on hand of it now?

Ans. I haven't any of it.

Int. 65. Do you mean to say that you have consumed it all in living since the time of your assignment or have you a part of it invested?

Ans. I hav'n't consumed it all in living. I have paid some of my individual debts. I was sick in the spring, & my wife was sick, and I consumed a good deal of it that way, and I have spent some in having a crop made, and various other ways. I have none of it invested.

Int. 66. How much money, if any, did you pay to R. C. Cates on the 6th of December, 1886?

Ans. I paid him 700 dollars, I think, or 750 dollars. It was money that I collected for him that belonged to him. It was
226 money that I went to Mobile after. I collected it from a Mr. Scales, a brother to another Mr. Scales that bought some Jersey cattle from him.

Int. 67. Do you mean to say that you went to Mobile solely to collect that money for Mr. R. C. Cates?

Ans. 67. Yes, sir; that was my business there.

Int. 68. If that is true, Mr. Andrews, why did you not take the expense of your trip out of that money instead of out of the business of Andrews, Cates & Co., at Tupelo?

Ans. As we had a small lot of cotton there at Tupelo that we couldn't sell, and it was the understanding that I was to go to Mobile, the buyer there in Tupelo told us there was a concern in Mobile, and that — I was going down there he would advise me to ship it there and they could sell it, he thought, to an advantage, and as I was going down there he gave me the address and I called on the merchants and they told me if we would ship them the cotton that they would do the best they could for us. I asked them if they would advance any money on it, and they said they were perfectly willing and that they would hold the cotton to the best advantage and I drew, I think it was, 400 dollars on the 11 bales. I came home. The reason the expense was charged up to our business, by going there — had transacted some business for Andrews, Cates & Co., and Luke Cates said that we would charge the
227 expense to ourselves. The remark was that Bob was so hard up that we would charge it to ourselves. He claimed—R. C. Cates claimed—that Andrews, Coates & Co. owed him for several trips down there anyway that he had never charged to them.

Int. 69. Did the firm of Andrews, Cates & Co. not sell all of their cotton before their assignment?

Ans. Am not positive. I think we had one or two bales. We kept it all sold up as we was needing the money. We sold every week or few days. It may be at that time it was all sold.

Int. 70. Please refer to cash book and see if the firm of Andrews, Cates & Co. did not, after the 1st of December, 1886, sell about $3,700 *dollars* worth of cotton between that & the day of the assignment.

Ans. After referring, I think they sold about $3,677 worth of cotton in that length of time.

Int. 71. Did Cates & Andrews have on hand any cotton at the time of the assignment that they turned over to the assignee?

Ans. I don't know whether they did or not.

Int. 72. Please refer to the cash book before referred to, page 321, & explain the entry "November 3rd, by Cates & Andrews, S. T. K. acc't, p'd R. C. Cates $500."

Ans. He said he wanted to draw this money out of the business to use it. I think he said he wanted to settle some of his Mills estate matters.

Int. 73. What explanation, if any, did he give for wanting the $3,000 and on what account was it paid to him?

Ans. My understanding was that he had used some money
228 or borrowed some money some way, and that he must have it to replace it by the 1st of December. It was charged to his individual account.

Int. 74. Was it not paid to him as administrator of the Mills estate?

Ans. No, sir; Mr. Cates told me that he needed this money by the 1st of December, if he could get it that soon, to replace some money that he had used of the Mills estate.

Int. 75. How much did the firm of Luke Cates & Co. or Andrews, Cates & Co. owe R. C. Cates as administrator of the Mills estate, if anything?

Ans. No; we didn't owe him anything as administrator of the estate, as I understand it.

Int. 76. Did not R. C. Cates, as administrator of the Mills estate, hold the note of Luke Cates & Co. for $2,000, payable to R. C. Cates, as administrator of said estate?

Ans. I know he held a note. I don't know how it was drawn up. Luke Cates signed it. I think it was for $2,000.

Int. 78. Please refer to ledger of Andrews, Cates & Co., page 94, account of R. C. Cates, Kossuth, Miss., and explain, if you can, the 1st entry on said account, the following words & figures, to wit: "1886, March 18th, to cash, 2,000 dollars; am't credit on L. C. & Co.'- note, 2,000 dollars," and state what note said money was paid on.

Ans. It was my understanding that when Mr. Cates went to Tupelo and sold the interest of Andrews, Cates & Co. to Luke Cates,
Luke Cates was to pay Mr. R. C. Cates 2,000 dollars some
229 time during the spring. He was to pay 2,000 dollars, and on the 18th of March or about that time he paid the two thousand dollars. I don't remember what was said about what note it was to be paid on. Luke had that last entry made. I guess it must be correct.

Int. 79. Did R. C. Cates hold more than one note against Luke Cates & Co. for large amounts?

Ans. No, sir; I don't think he did.

Int. 80. Please examine the ticket here handed you & state if that is in Mr. Stone's, the book-keeper of Andrews, Cates & Co., handwriting, and state also the language of said ticket.

Ans. Yes, sir; I think this is Mr. Stone's handwriting, and the ticket reads as follows: Taken by 12 | D. Andrews, 12,087.20, 25.00; taken by Luke Cates, 1,000.00.

Int. 81. Is that the ticket that was made when you got the money in an envelope from Luke Cates, as referred to in answer to a previous interrogatory?

Ans. I think it is, sir; it must be. There was only one ticket made, and I must have been mistaken in the answer before and the amount.

Int. 82. What about the $25 charged on said ticket to you?

—. It must be the amount of money handed me when I went to Mobile.

Int. 83. Please examine the ledger of Andrews, Cates & Co., page 93, and explain, if you can, the stock account of Luke Cates & Co. and Andrews, Cates & Co. and see if said stock account don't
230 show that Luke Cates had a half interest in the business at Tupelo and Cates and Andrews a ½ interest.

Ans. I have examined said stock account and I can't explain it. I know that is the way our interest stood, & I think that shows it here.

Int. 84. Does not said stock account show that the entire assets of the firm at Tupelo on July the first, 1888, was considerably less than $35,000 *dollars?*

Ans. Yes; it shows that it is not, if I understand it right. I think the books are correct; that is what I go by.

Int. 85. What does said stock account show that the nominal assets of the firm of Andrews, Cates & Co. at Tupelo was *at* the 1st of July, 1886?

Ans. $33,673.70.

Int. 86. Was any additional capital paid in by either partner after the 1st of July and before the failure of said firm?

Ans. No, sir.

Int. 87. What collaterals, if any, did Col. A. H. Taylor, president Tishomingo Savings Institution, have to secure any part of the indebtedness of Andrews, Cates & Co. to said institution?

Ans. We left some warrants with Col. Taylor some time in the summer. I don't know the exact date to place to the account of Andrews, Cates & Co., and I told him that he would place the warrants to our credit, as we wanted to draw against them.

231 Int. 88. Please examine the account of Andrews, Cates & Co. with the Tishomingo Savings Institution and see if any credit is given on said account for said warrants as a deposit or otherwise.

Ans. I have examined said account and can't see any credit, as I understand it.

Int. 89. How much warrants were deposited with Col. Taylor, at what times, and what amounts, as shown by the books & your memory?

Ans. There was $604.32c. I think that is the amount I deposited myself; $171.13, Sept. the 6th, 1886; $85.45c., Oct. 5th. These two last amounts—I don't know whether — were sent to him by mail or whether they were deposited by Luke Cates. The total amounts are $860.90c. All I know about the last 2 items is what the books show.

Int. 90. Please refer to the ledger aforesaid, page 293, account of Luke Cates, & explain, if you can, the item, "Dec., 1886, to W. A. C., $375.00."

Ans. I can't explain it.

Int. 95. Please refer to said ledger account of Luke Cates, page 292, and explain, if you can, these two items: "Nov. 6, 1886, to H. F. & Co., 111.95c.;" "Nov. 9th, to J. M. A., $386.11."

Ans. I have referred to ledger and I can't explain either one.

Int. 96. Please refer to said ledger and said page and said account and explain the following 2 items: "To cash, Nov. 22, $83.65; to cash, Nov. 23, $35.40."

Ans. No, sir; I can't explain it.

232 Int. 97. Refer to said ledger, page 372, acc't of D. Andrews, item-, "Nov. 30th, to cash, $86.30; Dec'r 1st, J. M. H., $30.00," and explain said items.

Ans. I am satisfied I got the money, but don't know how I used it. I expect, maybe, the journal would explain it.

Int. 98. How much money did you make by your investment in Chattanooga since your assignment?

Ans. I haven't made any investment myself.

Int. 99. For whom did you make investments there?

Ans. I made an investment for her of $300. I don't think I have made anything for her; I know I haven't.

Cross-examination of D. ANDREWS:

X Int. 1. From what you know of the business of Cates and Andrews what would you say that it was worth at the time of the assignment, including goods, lands, notes, &c.?

Ans. We certainly could, by proper management, have realized $13,000 from it. These statements are from memory mostly; it is guess-work.

X Int. 2. When did you agree with Luke to pay R. C. Cates the said $3,000?

Ans. I think it was about the 1st of November. I won't be positive.

X Int 3. Where are these depositions being taken?

Ans. In the chancery clerk's office, at the court-house, at Corinth, Alcorn county, Mississippi.

233 X Int. 4. Are all the books of Andrews, Cates & Co., of Luke Cates & Co., here, and were you the book-keeper for the house?

Ans. 4. No, sir; nothing but ledger and cash book here; no, sir; I wasn't the book-keeper for the house.

X Int. 5. What books are not here of said firm of Andrews, Cates & Co.?

Ans. 5. The journal and cotton book.

X Int. 6. Are you familiar with the books?

Ans. 6. I am not familiar enough to explain some entries made on some of them.

X Int. 7. Who was the book-keeper of Andrews, Cates & Co. and where is he?

Ans. J. K. Stone. I understand that he is in Sherman, Texas, clerking at a bank.

X Int. 8. State which one of the firms used the money owed to the Tishomingo Savings Institution at the time of the assignment?

Ans. Andrews, Cates & Co.

X Int. 9. State whether or not F. G. Smith, one of the assignees

of the assignment, was in possession of the stock of goods and other property of Andrews, Cates & Co. at Tupelo prior to the levy of any attachment on said stock and prior to the levy of the writ of sequestration thereon.

Ans. He was.

X Int. 10. Do you know F. G. Smith?

Ans. Yes, sir.

X Int 11. Do you know his character for honesty, integrity, u-rightness, and his business qualifications? If so, state what they are.

234 Ans. Yes, sir; I know his character, and he has always been considered honest, truthful, & moral, and his business qualifications are fair.

Re-examination:

Int. 1. What was Mr. F. G. Smith's financial condition at the time of the assignment?

Ans. He was considered as having not much money, property, or means.

Int. 2. Is he not considered a poor manager of his own business affairs?

Ans. Yes, sir; he has a reputation of being a bad manager of his own business affairs.

Int. 3. Why was the bills receivable and bills payable account of Andrews, Cates & Co. transferred to D. Andrews from the ledger account on June 30th, 1886, and where is said private ledger?

Ans. At that time we had decided that we would keep all of our foreign merchandise account on private ledger, as that was the way that I had been used to managing that account, and after this was done we decided to keep it on the ledger, and I don't know where the private ledger is now. I don't think there was but 1 or 2 entries made on it.

Int. 5. Was not a large proportion of the claims due Andrews, Cates & Co. at Tupelo worthless?

Ans. I thought so after collecting season set in.

235 Int. 6. What do you know of some notes belonging to Cates & Andrews at Kossuth having been transferred on the 4th and 6th of December, 1886, to T. W. Dilworth, Mrs. Elizabeth Cates, Mr. McClamrock, and Mr. Mathes?

Ans. I know that Mr. Cates told me that he had transferred notes to all the parties—to Mrs. Cates. I didn't know anything about that we were owing these parties, and I suppose that is why he did it.

Int. 7. How much did he tell you he transferred?

A. I don't know that he ever told me how much he transferred and what notes.

DAVID ANDREWS.

236 A. H. TAYLOR, being sworn, testified as follows:

Int. 1. Give your name, residence, and occupation and what connection, if any, you have in the case of J. H. Allen *et al.* against R. C. Cates *et al.*

Ans. A. H. Taylor, Corinth, Miss.; banking. I don't know the relation I have with it; all I know is the summons. I am president of the Tishomingo Savings Institution, and the Tishomingo Savings Institution is one of the defendants in said cause, made so by its own petition.

Int. 2. What became of the warrants deposited with you by Andrews, Cates & Co. before their failure? & tell how they were deposited.

Ans. They are at the bank now. They were owing the bank at the time they were deposited and wanted to draw some more. They had an open account at that time. They were checking and I was paying drafts for them. I was to collect them and place them to their credit; when the money was realized I was to place it to their credit.

Int. 3. What amounts of warrants were there?

Ans. There was 3 amounts at 3 different times. I think there was $604 and some cents in one package, 171 dollars and some odd cents, and some 80-odd dollars in the other.

Int. 4. Did you furnish Mr. J. Q. Robins & Col. J. A. Blair,
237 att'ys for complainants in this cause, a copy of the accounts of Cates and Andrews, Luke Cates & Co., and Andrews, Cates & Co. with the Tishomingo Savings Institution? And if so, examine the paper here handed you by counsel & see if that is the statement you furnished them.

Ans. Yes, sir.

Int. 5. Please examine said statement & see if it is correct: &, if so, append it as a part of your deposition in this case.

Ans. I will examine said statement & compare it with my books and furnish a correct copy of my books and append it with my deposition as an Exhibit No. 1.

Int. 6. Is there anything on said statement or on your books to show that said warrants were deposited with you and the amounts of said warrants?

Ans. It is not entered as a credit in any way on said statement or books, and there is nothing on my books to show that they were deposited—only a memorandum book.

Int. 7. Where is that memorandum book?

Ans. I can't say it was a memorandum book, but it was a memorandum. We frequently make a memorandum and file with papers. I don't think this was in any book.

Int. 8. What other collaterals, if any, had you from Andrews, Cates & Co. or Cates & Andrews or other security of any kind for any part of your debt? I mean by your the Tishomingo Savings Institution and not yourself as an individual.

238 Ans. 8. I don't remember ever having any other than that. I've got no other and don't remember of ever having any other.

Int. 9. For what year were the warrants issued?

Ans. I don't remember. I don't remember of examining the dates of the warrants.

Int. 10. What effort, if any, & when & how have you made to collect these warrants or any part of them?

Ans. I wrote to the treasurers of Lee county and Itawamba county, also to the sheriff of Lee and Itawamba, asking about them or when they could be paid, or I wrote to the sheriff to know if he could take them up. I don't remember the exact language I used, but I wrote inquiring whether or not I could get any money on them. They wrote me that they didn't have any money or didn't know when they would have.

Int. 11. When did you write to these parties?

Ans. 11. Last fall, after the assignment. After reflection, I can't say whether it was before or after the assignment. It was some time last fall or winter; it must have been before the assignment; I am not positive about it.

Int. 12. Have you those letters written in answer to yours? If so, will you furnish copies of them or the original and file them with your deposition and mark them exhibits to your deposition?

Ans. I don't know. I will look for them, and if I can find them I will furnish you with a copy of them and file with my deposition as Exhibits No. 2.

239 Int. 13. How much money, if any, did Andrews, Cates & Co. or Cates & Andrews or either of these members of the said firms pay you as president of the Tish. Sav's Inst. after the assignment on debts contracted before the assignment?

Ans. I remember only one transaction. Mr. D. Andrews paid me, I think, $80 on his own individual account, not for Andrews, Cates & Co. or Cates & Andrews or Luke Cates & Co. or anything of that kind. I think it was on the 6th of December, 1886. I let him have the money to pay his taxes and he paid me back a few days afterwards.

Int. 14. Did you swear to the answer to the Tishomingo Savings Institution in this cause?

Ans. I swore to an answer; it is the one filed in this cause for the Tish. Sav's Inst.

Int. 15. Why did you not inform the court in that answer that you had the collaterals?

Ans. I did not know that it was necessary.

Cross-examination:

X Int. 1. Did you in good faith acquiesce in and accept said assignment from the grantors therein for the pupose of the payment of said grantors' indebtedness to the Tish. Sav's Inst.?

Ans. I did.

X Int. 2. Did you have any knowledge, either directly or indirectly, at the time said assignment was made of any fraud or fraud-
240 ulent intent or purpose on the part of said grantors in executing & making said assignment?

Ans. None whatever.

Re-examination:

Int. 1. In answer to cross-int. No. 1 you say you accepted the said assignment from the grantors therein for the purpose of the payment of the indebtedness of said grantors to the Tish. Sav's Inst. What do you mean by saying you accepted it in payment of the debt to the Tish. Sav's Inst.?

Ans. 1. I don't know how to answer that or put it in shape so you could understand it. I meant I was willing to accept the assignment if they would make me a preferred creditor; I made no objections to them making the assignment in that way.

Int. 2. What do you mean by saying you accepted the assignment in payment of the debt of the Tishomingo Savings Institution or saying that you were willing to accept it that way?

Ans. 2. I don't know whether I could answer that so you could understand it or not; I mean that I was willing to accept it in that way.

Int. 3. What do you mean by accepting the assignment?

Ans. 3. I mean I raised no objections to them making the assignment in that way.

241 Int. 4. What do you mean by accepting it in payment of your debt?

Ans. I meant I had no objections to them making the assignment to secure my debt; I didn't mean that that was in satisfaction in full of the debt, but I took it as security for the debt—that is, to secure the debt.

Int. 4. What right had you to object to Andrews, Cates & Co. making any kind of assignment to their property?

Ans. 4. I don't know that I had any right any more than any other creditor.

Int. 5. Did you consent for them to make the assignment before they made it or did they ask you for your consent before they made it?

Ans. 5. I did not consent to them; we had had a talk before that; they did not ask my consent for them to make it.

Int. 6. You say you did not consent to them; to whom, then, did you consent?

Ans. 6. Mr. Young told me what he was going to do or rather what they was going to do; that they were going to make an assignment; I don't remember that I consented any further than that; I may have consented to them; don't remember.

Int. 7. You would not have consented to any one, would you, if they had not made the Tish. Sav's Inst. a preferred creditor?

Ans. 7. I think not.

Int. 8. The assignment was then made, was it, in order to secure the debt of the Tish. Sav's Institute?

242 Ans. 8. I can't say; that was my understanding, that they would secure the Tishomingo Savings Institution.

Int. 10. Who is T. D. Young, and what connection, in that transaction, did he have with the Tishomingo Savings Institution?

Ans. 10. He is a lawyer; he had no connection with the institution; none.

Int. 11. Wasn't he the attorney for the Tish. Sav's Inst.?

Ans. 11. No, sir; he was not at that time. I don't know how he understood it; that was my understanding.

Int. 12. Did you not confer with him before the assignment about securing your debt—the debt of the Tishomingo Savings Institution—and was not the assignment prepared in the back room of the Tish. Sav's Inst.?

Ans. 12. He had been attorney for the bank for years. When he removed to Chattanooga he told me that he couldn't be attorney any longer. What he meant by saying that he couldn't be attorney any longer was that he had previously been employed by the year and that relation ceased. I didn't mean that I couldn't employ him any more or confer with him about any case. I talked with him about securing the debt of the institution before the assignment. Cates, Andrews, Young, & myself all talked about it; in other words, we were all in the same room talking about it. I con-
243 ferred with Mr. Young no other way; only that. The assignment was not wrote in the back room of the Tish. Savings Inst., but it might have been signed there. Young, Andrews, & Cates were in the back room of the Tish. Sav's Inst. all day. I heard nothing of their talk or consultation only in our conference above spoken of.

Int. 13. Is not Mr. Young att'y for the Tish. Sav's Inst. in this case?

Ans. 13. He represents it. I never made any trade with him or employed him or nothing of the kind. I am expecting him to look after it, but I have made no trade with him or had no understanding particularly with him about it; I mean in reference to what fee he would charge me or anything of that kind, but I am expecting him to look after the case for me so far as my interest is concerned, or, rather, the interest of the bank. Mr. Young told me that Mr. Cates had concluded to make the assignment and make the bank a preferred creditor, and I asked him to look after the interest of the bank or represent the bank in the case. If that is employing an attorney I don't want it construed in any other way.

Int. 14. Was that before or after the preparing of the assignment?

Ans. 14. It was before.

Int. 15. Was this on the day that Mr. Andrews, Mr. Young, & Mr. Cates were in the bank together?

244 Ans. I don't think it was. I think it was the next day; but it was at night, I think; I am not positive. It might have been before Mr. Andrews left, but I think it was after.

Recross-examination:

X Int. 1. Mr. Young was the attorney for Cates & Andrews and Andrews, Cates & Co. in preparing and advising about said assignment and what course they would pursue in their matters, was he not?

Excepted to.

Ans. That was my understanding. They were there consulting, and I did not hear them make any trade, though.

Int. 2. Did you not mean in your answers to cross-interrogatories as to your acceptance of said assignment that you accepted the assignment of the property in said assignment conveyed as an absolute payment of the debt of the Tish. Sav's Inst. so far as that property is concerned and would pay the same?

Ans. Yes; so far as that property was concerned and would pay the same, I did.

Re-examination:

Int. 1. What do you mean by saying so far as that property is concerned and would pay the debt?

Ans. 1. I meant I was willing to take that property so far as it would pay.

245 Int. 2. Do you mean that as far as the property would go that you accepted it in absolute payment of that debt and released the two Cates and Andrews?

Ans. 2. So far as the proceeds of that property was concerned, that I accepted it as that much of the debt.

Int. 3. Suppose the assignment is not sustained, how much of the debt of the Tish. Sav's Inst. is then paid by the assignment of the property?

Ans. The idea intended to be conveyed is that if no proceeds is received that the debt would not be paid.

Int. 4. What you really mean, then, is that whatever proceeds you get from the assignment will be applied to the payment of the debt so far as it will go, and that if nothing is received there is no payment of any part of the debt?

Excepted to.

Ans. That is my idea; if nothing is received nothing will be paid.

A. H. TAYLOR.

246 "EXHIBIT A," A. H. TAYLOR.

Cates & Andrews in ac. with the Tishomingo Savings Institution.

1882.				
July 18 to Aug. 30,	deposits	500 00		
" "	p'd d'fts & c'ks	------		500 00
Sept. 11 to Oct. 31,	deposits	378 99		
" "	p'd d'fts & c'ks	------		378 99
Oct. 31 to Nov. 8,	deposits	310 56		
" "	p'd d'fts & c'ks	------		310 56
Nov. 10 to Nov. 13,	deposits	200 00		
" "	p'd d'fts & c'ks	------		200 00
Nov. 17 to Dec. 5,	deposits	472 44		
" "	p'd d'fts & c'ks	------		472 44
Dec. 11 to Dec. 18,	deposits	125 00		
" "	p'd d'fts & c'ks	------		125 00

Dec. 21, '82, to Jan. 5, '83, deposits	727 16		
" " " p'd d'fts & c'ks	------		727 16
1883.			
Jan. 16 to Jan. 31, deposits	287 96		
" " p'd d'fts & c'ks	------		287 96
Feb'y 2 to Feb'y 22, deposits	344 28		
" " p'd d'fts & c'ks	------		344 28
Feb'y 22 to M'ch 8, deposits	110 44		
" " p'd d'fts & c'ks	------		110 44
M'ch 8 to April 5, deposits	360 65		
" " p'd d'fts & c'ks	------		360 65
April 5 to May 3, deposits	183 52		
" " p'd d'fts & c'ks	------		183 52
May 3 to May 31, deposits	397 61		
" " p'd d'fts & c'ks	------		397 61
May 31 to July 5, deposits	408 28		
" " p'd d'fts & c'ks	------		408 28
July 5 to Aug. 3, deposits	240 01		
" " p'd d'fts & c'ks	------		240 01
Aug. 3 to Nov. 8, deposits	1,330 54		
" " p'd d'fts & c'ks	------		1,330 54
Nov. 8, '83, to Jan'y 21, '84, deposits	8,925 29		
" " " p'd d'fts & c'ks	------		8,925 29
1884.			
Jan'y 21 to April 19, deposits	5,150 52		
" " p'd d'fts & c'ks	------		5,150 52

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1884.			
Apr. 19 to Dec. 31, deposits	9,144 30		
" " p'd d'fts & c'ks	------		9,144 30
1885.			
Jan. 1 to June 12, deposits	5,618 91		
" " p'd d'fts & c'ks	------		5,618 91
June 15 to Dec. 10, deposits	4,822 62		
" " p'd d'fts & c'ks	------		4,822 62
1885.			
Dec. 10. Bal. br't forward	------		517 45
Note	------		541 50
Dep't c'ks	1,467 37		
11. J. W. Wright & Co.	------		4 75
Kimmons & Boyd	------		74 50
Phillips & Bro.	------		65 00
14. F. M. Bell	------		34 00
15. G. Arnold & Co.	------		450 00
Lanson	------		48 50
18. Cash	------		100 00
23. Dixon & Co.	------		20 10
P. D. Wright	------		72 35
30. Cash	------		350 00
Dep't c'k	919 15		

		M. Boyins		6 60
		Sanders		18 75
	1886.			
		I. W. Dranghan		22 61
Jan.	6.	M. Boyins		7 10
		Corinth Herald		1 00
	11.	Harter & Co.		38 91
		Hamlin & Henry		3 10
	13.	B. F. Williams		200 00
		Dep't c'k	1,149 34	
		J. M. Bynum		54 35

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	1886.			
Jan.	13.	I. A. Laughlin		107 00
	20.	Cash		5 00
		Phillips & Bro.		28 56
	22.	E. C. Carter		66 00
Feb'y	8.	Dep't c'k	743 21	
		" "	28 43	
		J. F. Small & Co.		9 59
	10.	Cash		245 00
	16.	Brooks, Maley & Co.		72 33
Apr.	8.	Cash		140 00
	19.	Winfree, Lons & Maupin		66 17
	28.	Bamberger, Bloom & Co.		108 95
		Gans, Arnold & Co.		109 00
		Hood, Boonbright & Co.		152 85
May	18.	Dep't	200 00	
June	2.	Jno. Shillet & Co.		146 83
	4.	Nash & Bro.		18 00
	20.	Dep't	400 00	
Oct.	1.	J. & A. Simpkinson		402 00
		Bohm Bro. & Co.		200 00
	11.	Dep't c'k	256 32	
	14.	" "	347 82	
		Cash		150 00
		Winfree, Lans & Maupin		37 03
	21.	Dep't c'k	731 08	
		Cash		400 00
Nov.	3.	B. F. Williams		25 00
	12.	C'k Cates & Andrews		150 40
Dec.	6.	Cr. on note		472 44
			6,242 72	6,242 72

249 Luke Cates & Co. in ac. with the Tishomingo Savings Institution.

	1884.			
Jan.	21 to Feb'y 6,	deposits	1,113 91	
"	"	p'd d'fts & c'ks		1,113 91

May 23 to Nov. 20, '86, deposits			6,884 60	
" " p'd d'fts & c'ks			------	6,884 60
1886.				
Jan.	18.	Dep't note	400 00	
	21.	S. C. Harris & Co.	------	400 00
		Shapleigh & Co. H'dw. Co.	------	100 00
		Halliday Bros.	------	60 48
	22.	F. M. G.	------	55 35
	20.	T. E. Gardner	------	50 27
		" "	------	35 00
		" "	------	28 98
		Meek, Finger & Co.	------	300 00
		Lee Co.	------	187 59
		Clark, Herrell & Co.	------	60 75
		Grannis & Shuttleusk	------	118 12
		Lee Co. bank	------	217 14
		Geo. B. C. Bros. & Co.	------	200 00
		Bohun Bros. & Co.	------	284 85
	27.	F. Johnson	------	34 10
	30.	Lee Co. bank	------	139 93
		Adam Thorn & Co.	------	445 73
		F. Johnson	------	58 37.
Feb.	6.	Cash by express	500 00	
		Meyer & B.	------	200 91
		T. E. Gardner	------	30 90
		Bay State S. & L. Co.	------	200 00
	10.	S. Clapp	------	52 72
		Lee Co. bank	------	148 91
	8.	S. Tapp	------	31 72
		" "	------	13 00
		" "	------	22 45
	8.	Meek, Finger & Co.	------	200 00
	18.	Smith, Meyers & Schrim	------	240 00
	22.	Jno. S. Halditch	------	159 15

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1886.				
Feb'y	22.	Shelby Topp	------	31 61
		Lee Co. bank	------	76 84
		S. C. Davis & Co.	------	150 00
		Smith & Baskin	------	50 00
		Anchor Milling Co.	------	136 90
M'ch	2.	Lee Co. bank	------	91 70
	8.	Dep't	900 00	
		High & Ham	------	116 56
		T. E. Gardner	------	29 33
		Lee Co. bank	------	232 25
		Columbus Ins. & B'nk Co.	------	134 64
	15.	Dep't	1,000 00	
	18.	"	400 00	
		Lee Co. bank	------	182 49

		Sumpter Phillips	------	30 00
		Shelby Topp	------	45 28
		Sam'l C. Davis & Co.	------	369 00
		Meek, Finger & Co.	------	200 00
	23.	Dep't	400 00	
		Jno. I. Adams & Co.	------	124 23
	26.	Dep't	200 00	
		Ivery & Owen	------	115 25
		McFarren, Lallons & Co.	------	36 92
		Greechy, Bamburger & Co.	------	35 82
		Bay State Sole & Leather Co.	------	200 00
		W. B. Belknap & Co.	------	58 98
	29.	Bamberger, Bloom & Co.	------	245 00
		B. F. Avery & Son	------	106 06
Apr.	1.	Dep't	250 00	
	2.	Anchor Milling Co.	------	257 50
		Adam Thrus & Co.	------	100 00
	12.	Milburn Wagon Co.	------	50 00
	14.	Schmidt & Ziegler	------	39 68
		Granman Shutterauk	------	50 00
		Bamberger, Bloom & Co.	------	100 00
	16.	T. M. Robinson & Co.	------	154 35

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1886.

Apr.	19.	Reg. letter dep't	350 00	
		A. H. Lyon & Co.	------	150 00
	20.	Reg. letter dep't	100 00	
	22.	" "	100 00	
	24.	W. T. Adams	------	3 00
	26.	Branland Johnson	------	148 65
	28.	Jno. I. Adams & Co.	------	19 25
		G. S. Jeffrey & Co.	------	39 84
		Schmidt & Ziegler	------	96 44
		Edwin Bates & Co.	------	116 75
May	1.	Bay State S. & L. Co.	------	169 66
		Adam Thrus & Co.	------	100 00
		Anchor Mill. & Co.	------	186 90
		Bamberger, Bloom & Co.	------	100 00
		J. M. Robinson & Co.	------	100 70
		Wm. Linday	------	48 25
		Iglehart & Bros.	------	100 00
	7.	Dep't	674 00	
	8.	Lee Co. bank	------	50 50
	14.	Dep't	300 00	
	1.	Meek, Finger & Co.	------	112 00
May	20.	Shelby Topp	------	73 79
	26.	"	------	47 05
	28.	Meek, Finger & Co.	------	145 49
	31.	T. E. Gardner	------	30 25
June	7.	Dennis Lyle & Co.	------	92 70

		T. E. Gardner		25 83
	10.	Cash (check)		300 00
	14.	C. A. Sittner		19 15
		Adams, Thorn & Co.		100 00
	18.	Halliday Bros.		74 00
		Budgeford & Co.		59 12
		A. B. Bumhuns & Co.		30 90
June	22.	Dep't	150 00	
	29.	"	44 10	
	25.	W. W. McPherson		44 10

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1886.

July	1.	Maskey, Nault & Co.	1,192 19	
	5.	Dep't	30 00	
		Anchor Mill. Co.		200 00
		Shapleigh Hdw. Co.		50 11
	14.	T. E. Gardner		12 25
		Gramnors & Shuttlework		75 00
		Iglehart Bros.		203 32
	17.	Dep't	150 00	
		W. I. Rogers		257 55
	27.	T. E. Gardner		50 00
		High & Starr		75 00
Aug.	5.	T. E. Gardner		23 16
	6.	John I. Adams & Co.		26 97
	7.	J. W. Hoyle		50 00
	11.	Dep't	100 00	
		Iglehart Bros.		203 32
		R. Walters & Sons		13 50
		Stewart, Ralph & Co.		70 65
Sept.	6.	Dep't	150 00	
	11.	McFarren, Shalbrooks & Co.		49 85
		Anchor Milling Co.		391 75
		Edwin Bates & Co.		118 50
	15.	Hill, Standish & Co.		68 55
		High & Sterne		118 91
	23.	Dep't	121 75	
	25.	McAnd Aydelott		189 80
	29.	Dep't	44 75	
		Jno. Clark		150 00
		D. M. Felley & Co.		17 75
Oct.	2.	T. E. Gardner		59 45
		Adams, Thorn & Co.		212 61
		Chas. Clifton		75 00
	7.	W. J. Sutters		200 00
	8.	Dep't	942 66	
	14.	Meek, Finger & Co.		430 25
		W. H. Lyons & Co.		216 64

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1886.

Oct.	18.	R. & T. A. Ennis	------	29 02
		C. & B. Hdw. Co.	------	24 17
		Hess, Mayer & Co.	------	32 00
		Adams, Thum & Co.	------	100 00
		Winfred, Sans & Maupin	------	130 50
		Manderson, S., & Co.	------	50 10
		Wm. R. Moore & Co.	------	57 10
		Halliday Bros.	------	18 00
		Bohm Bros. & Co.	------	35 40
	26.	Dep't	750 00	
	27.	Tinsley Tobacco Co.	------	64 37
		Hoyle & Wilson	------	6 30
		Hadman & Gathright	------	127 45
		Bamberger, Bloom & Co.	------	500 00
Nov.	1.	Dep't	750 00	
		Hoyle & Wilson	------	215 90
		W. H. Lyon & Co.	------	216 64
	5.	J. K. Stone	------	40 00
		Halliday Bros.	------	93 56
	9.	Dep't	300 00	
	12.	"	600 00	
	15.	"	200 00	
	18.	Hoyle & Wilson	------	200 00
	19.	Dep't	200 00	
	20.	Bal. from L. Cates & Co. ac.	45 44	
		Int.	------	30 00
	23.	Note to balance	643 32	

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THE UNITED STATES OF AMERICA,
The Eastern Division of the Northern District of the State of Mississippi.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.*
No. 41. In Chancery.

I, C. W. McCord, United States commissioner for said district, hereby certify that in obedience to the commands of the commission hereto attached I caused to come before me, at Corinth, Mississippi, at the hour of 12 m. on the 29th day of Sept., and from day to day thereafter, according to the adjournment of my court and agreement of counsel for complainants and defendants up to the present time, R. C. Cates, H. H. Taylor, & D. Andrews, defendants in the above-styled cause, to be examined therein; and said witnesses, after having been first duly sworn upon their corporal oaths by me to tell the truth, the whole truth, and nothing but the truth, and being examined and cross-examined by counsel for complainants and defendants, the interrogatories and answers thereto being taken down

in writing in the presence of said witnesses and read to them in my presence and signed by them in my presence, deposed
255 and testified as shown by the foregoing interrogatories and answers; which answers I here certify to be the ones made by the said witnesses to the said interrogatories.

Witness my signature this 3rd day of Oct., 1887.

C. W. McCORD, [SEAL.]
United States Com.

I further certify that these depositions were by me sealed up and put in the express office at Corinth, Miss., directed to G. R. Hill, clerk of U. S. court, Aberdeen, Miss.

C. W. McCORD,
U. S. Commissioner.

256 *Report of Curtis, Receiver, Feb'y* 11, 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } No. 41.

To the Hon. R. A. Hill, judge of the United States district court for the eastern division of the northern district of Mississippi:

W. J. Curtis, appointed receiver of the effects — Andrews, Cates and Co. by this honorable court, begs leave to submit the following report of his doings with said estate:

Your receiver took charge of the effects of said estate soon after his appointment as said receiver. He sold the stock of goods, wares, and merchandise at Tupelo to Norton & Elliott and by the advice and direction of counsel engaged in the case took good notes for the purchase-money ($6,250.00), due 1st of Oct., bearing 6% interest from date.

He has collected on account of said estate $1,699.44, as shown by itemized statement hereto attached; has paid out on account of said estate $399.05, leaving a balance on hand at this time of $1,300.39, which your receiver has been directed by counsel in the case to deposit at Gattman's bank in Aberdeen, but has not
257 yet done so, but will do so as soon as he can get an order to that effect. Your receiver opened the store and began to retail the goods, but found that the expense would be too great and sold them out in bulk as above indicated.

Your receiver has rented the storehouse in Tupelo for one year to Norton & Elliott for $200.00, and rented the small piece of land in Itawamba county for $15.00, all of which your receiver respectfully submits.

W. J. CURTIS, *Receiver.*

Feb'y 11, 1887.

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J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

W. J. Curtis, receiver of the effects of Andrews, Cates & Co., appointed by the honorable court, begs leave to make the following report:

This receiver charges himself with the following amounts received on account of said estate, to wit:

1886.				Dr.	Cr.
Dec. 27.	To am't rec'd from	B. F. Francis	on acc't	10 00	
" 30.	" "	W. W. Thurnoud, proceeds 4 b. c. on ac-ount		165 28	
31.	" "	Luther Lamb	on acc't	27 25	
"	" "	A. J. Doty	on note	4 50	
"	" "	Mrs. Lambert	on "	43 33	
1887.					
Jan'y 1.	" "	A. H. Thompson	" "	12 00	
"	" "	W. C. Riggs	" "	18 95	
"	" "	G. A. Morris	" acc't	23 25	
4.	" "	Emmet Scales	" "	4 95	
"	" "	Chas. Funleg	" "	12 80	
5.	" "	C. L. Deaton	" note	50 00	
6.	" "	Luther Duke	" acc't	1 00	
"	" "	Cason & Young	" "	13 90	
	" "	John McPerrin	" "	1 00	
7.	" "	A. J. McWilliams	" note	2 65	
"	" "	G. W. Wiley on judgment, less Robbins' fee for collecting & obtain. J.		6 00	
"	" "	G. T. Francis	on acc't	12 90	
"	" "	W. Z. Newton	" "	10 30	
"	" "	J. A. Ballow, Sr.	" "	5 10	
8.	" "	Cates, Gather Bros.	" "	21 25	
"	" "	T. A. Center	" "	19 25	
"	" "	P. Cates	" "	28 80	
"	" "	C. A. Porter	" note	5 80	
"	" "	R. F. Tarver	" "	5 00	
10.	" "	C. C. McCarty	" "	22 05	
	To am't forward			527 31	

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				Dr.	Cr.
1887.	To am't forward			527 31	
Jan'y 10.	To am't rec'd from	Luther Duke	on note	75	
12.	" "	Thos. S. Moon	"	19 00	
"	" "	Gurlerjon	"	21 75	
Jan'y 13.	" "	J. H. Hare	on acc't	38 05	
"	" "	Chas. Stevens	"	5 70	
"	" "	J. Gunter	"	20 20	
14.	" "	J. D. Brown	"	6 75	
"	" "	Jas. Barnett	"	5 15	
"	" "	T. S. Moon	"	10 92	
		W. H. Young	"	50 78	
15.		R. W. Gannon	"	1 90	
"		W. B. Johnson	"	7 10	
"		T. B. Taylor	"	37 00	
15.	" "	Jack Mann on account proceeds of sale of horses under trust deed		356 25	
"	" "	Will. Mann on account from proceeds of sale of horses under trust deed		98 50	
" "	am't rec'd from	Jack Mann on account proceeds of sale of cattle under trust deed		26 25	

15.	To am't rec'd from proceeds of sale of two mules of A. C. & Co.					54 00
"	"	"	W. H. O'Callighan	on note		10 00
18.	"	"	W. A. Cooly	on acc't		42 25
"	"	"	Gus Pearce	"		20 00
"	"	"	Joe Raper	"		11 63
"	"	"	Will. Logan	"		31 35
20.	"	"	John Maxey	"		11 70
"	"	"	J. Walker & Thos. Maxey			1 50
21.	"	"	John Simmons	on ac't		21 15
22.	"	"	W. A. Smith			7 05
"	"	"	J. M. Russell			4 75
						1,448 94

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					Dr.	Cr.
	To am't forward				1,448 94	
Jan'y 22.	"	from	Porter Russell	on acc't	9 00	
" —	"	"	Thornton & Littlejohn	"	15 00	
" "	"	"	Jeff. Middlebrooks	"	75	
" 25.	"	"	J. H. Kelley	"	9 60	
" 26.	"	"	W. L. Jones	"	17 45	
Feb. 1.	"	"	A. D. Martin	"	71 95	
" 2.	"	"	C. H. Clifton	"	50	
" "	"	"	T. E. Gardner	"	2 35	
3.	"	"	C. W. Austin	on due bill	18 50	
" 4.	"	"	W. T. Eikner	on acc't	13 00	
5.	"	"	Jas. Murche	"	83 10	
10.	"	"	W. H. Keys	"	9 30	
					1,699 44	

This receiver prays allowance for the following disbursements made on account of said estate, for all of which he holds vouchers:

					Cr.
1886.					
Dec. 30.	By am't p'd W. B. Long, sh'r'ff, taxes on stock of goods & real estate of A. C. & Co.				$120 00
1887.					
Jan'y 3.	By am't paid A. H. Thompson, 4 days' riding				12 00
" "	"	"	postage		30
" "	"	"	P. O. box rent		75
" 5.	"	"	S. T. Harkey, 7 days' riding @ 2.00 p'r day		14 00
6.	"	"	J. H. Miller, Journal office, printing for receiver		18 00
7.	"	"	A. L. Caruth, 9 days' services		18 00
7.	"	"	postage		25
8.	"	"	G. T. Francis, 9 days' services		18 00
"	"	"	W. Z. Newton, " "		18 00
					219 30

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					Dr.	Cr.
	By am't forward					219 30
Jan'y 15.	"	am't p'd	Mrs. Burns for feeding stock			4 30
"	"	"	two boys, driving cattle			55
21.	"	"	postage			25
25.	"	"	"			10
31.	"	"	"			25
" "	"	"	J. A. Thompson for 25 days' services			46 00
Feb. 1.	"	"	J. H. Miller, printing circulars			1 50
" 2.	"	"	J. H. Oglesby, feeding horses			16 80
" "	"	"	J. Q. Robins, att'y for making out this report			10 00
						399 05
	By am't of bal. on hand at this date					1,300 39
					1,699 44	1,699 44

262 *2d Report of W. J. Curtis, Receiver. Filed Apr.* 14, 1887.

Circuit Court of the U. S. for the Eastern Division of the Northern District of the State of Mississippi.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

To the Hon. R. A. Hill, judge of said court:

W. J. Curtis, appointed receiver of the effects of Andrews, Cates & Co. by this honorable court, begs leave to submit the following 2nd report of his doings with said estate:

Since making his first annual report your receiver has pressed collections as much as possible and has succeeded in collecting considerable money and adjusting quite a number of claims. Some of these your receiver has compromised by the advice of his attorneys.

Since his last report your receiver has paid out on account of said estate the sum of $253.36 and has received on account of said estate the sum of $1,724.83. There was on hand at last report $1,300.39. Your receiver now has on hand belonging to said estate the sum of $2,771.86. All of this your receiver respectfully submits, and now prays that all the charges be allowed your receiver as credits on his account with said estate; and your receiver herewith files an itemized statement showing each disbursement and each charge, which he prays be taken and considered a part of this report.

W. J. CURTIS, *Receiver.*

263 J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* }

W. J. Curtis, receiver of the effects of Andrews, Cates & Co. appointed by this honorable court, makes the following itemized statement, which he files as a part of his 2nd report.

This receiver charges himself with the following amounts received on account of said estate, to wit:

1887.					Dr.	Cr.
	To bal. due on last report				1,300 39	
Feb'y 15.	" am't collected from C. Hussey on ac't				20 65	
" 16.	" " col. from C. H. Moore est., per G. W. Wiley, on account				28 10	
" 17.	" " from F. Johnson on act.				10 00	
"	" " " F. M. Gour "				11 00	
18.	" " " D. Johnson, bal. on note				4 50	
"	" " " J. A. Pringle	on ac't			3 00	
"	" " " J. M. Witt	" "			1 00	
19.	" " " Wm. Mauldin	" "			6 00	
21.	" " " J. R. & Jas. Whitesides	" note			149 50	
"	" " " J. R. Whitesides	" ac't			47 75	
"	" " " John Triplett	" "			18 00	
"	" " " Haly & Cantrell on judgment				31 10	
"	" " " R. A. Prichard	on ac't			44 80	
"	" " " Hert Rupp	"			3 00	
22.	" " " J. W. Thomas	"			42 44	
"	" " " J. R. Dixon	"			7 00	

	22.	To am't from W. A. McCanless on acc't		4 55
	" " "	" J. L. Raines "		42 95
	26. " "	" Wm. Raines "		10 00
Mar.	1. " "	" J. A. Ballard, Jr. "		197 30
"	2. " "	" Dan. Pitts "		11 05
"	" " "	" D. A. Taylor "		5 00
		Am't forwarded		1,999 08
264				
		To am't brought forward from p. 1		1,999 08
Mar.	2. "	" from John Triplett on acc't		25 25
	3. "	" John Clayton & Sons on compromise of ac'ts		150 00
	7. "	" Wm. Raines on ac't		2 10
	" "	" A. L. Reese " judgment		13 80
	12. "	" Gus Pearce " ac't		14 00
	18. "	" B. F. McWhorter on ac't, p'r Pearce		56 65
	21. "	" Ryan & Marstellar " "		600 59
	" "	" W. S. Sheffield " "		10 75
Apr.	1. "	" B. F. McWhorter, p'r J. H. Oglesby		45 00
"	" "	" John H. Birch on ac't		8 00
"	7. "	" Lee Trapp on ac't		100 00
			$3,025 22	

				Cr.
This receiver prays allowance for the following disbursements made on account of said estate, for all of which your receiver holds receipt:				
Mar.	1.	By am't p'd H. E. Curtis for 42 days' services in riding and collecting for said estate	------	84 00
"	"	By am't p'd H. E. Curtis for expenses for self & horse while riding for receiver	------	27 00
	"	By am't p'd A. Huse Thompson for 1 night'- lodging & ferriage while riding for receiver	------	1 75
		By error in 1st report in am't of sale of Jack Mann's stock under trust deed, occasioned by entering twice sale of cattle	------	26 25
Mar.	1.	By am't p'd J. Q. Robins for obtaining judgment, collecting same *vs.* Haley & Cantrell	------	10 00
		Am't forward		149 00

265			Dr.	Cr.
		By am't forwarded from p. 1	$3,025 22	$149 00
		" p'd W. C. Bessonnett for copy of order appointing receiver	------	1 50
Feb.	12.	" p'd George Martin, sheriff, taxes	------	6 56
"	18.	" " postage	------	60
"	18.	" cash p'd M. A. Tully, 5 d's' services riding for receiver	------	10 00
"	"	" allowed parties summoned as garnishees, from whom the full amounts had been collected	------	24 20
Mar.	3.	By am't p'd 5 bu. corn to feed mules @ 65c.	------	3 25
		" " postage	------	40
Apr.	1.	" " J. H. Oglesby for keeping mule	------	6 50
Mar.	10.	" " postage	------	25
Mar.	20.	" " H. E. Curtis, 12 days' riding for receiver	------	24 00
		Expenses of H. E. Curtis in 12 days' riding	------	12 10
Apr.	11.	By am't p'd J. Q. Robins for making this report	------	10 00
"	11.	" " J. Q. Robins for obtaining judgment & collecting same *vs.* A. L. Reese	------	5 00
		Total disbursements	------	253 36
		By am't to bal.	------	2,771 86
			3,025 22	3,025 22
		Bal. on hand at the time of making this report, Apr. 11, 1887	$2,771 86	

266 *Opinion of the Court.*

In the District Court of the United States for the Eastern Division of the Northern District of Mississippi, Oct. Term, 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

This cause is submitted upon bill, cross-bill, answers, exhibits, and proofs, from which it appears that the defendants R. C. Cates, L. L. Cates, and D. Andrews were country merchants doing business in the town of Tupelo, first under the firm name and style of Luke Cates & Co. and then changed to the firm name and style of Andrews, Cates & Co., but both firms were composed of the same persons; that at the same time said R. C. Cates & D. Andrews were doing business as country merchants in the town of Kossuth, in Alcorn county, under the firm name and style of Cates & Andrews; that both of said firms became greatly embarrassed and insolvent; that, realizing their insolvent condition, they first concluded to call a meeting of their creditors for the purpose of obtaining from them, if possible, a compromise of their indebtedness, but after consultation with the president of the Tishomingo Savings Institution and his attorney it was concluded that the best way to effect the desired
267 compromise was to first make a general assignment of the property, choses in action, and every — owned and possessed by said defendants as partners or individuals, saving their exemptions under the law of the State; that in doing so a large debt due from the defendants to the Tishomingo Savings Institution should be preferred; also a debt due to Allen, West & Bush and another debt due to Dr. S. W. Gardner and some others. Accordingly, on the 7th day of December, 1886, the said defendants caused to be drawn up by the attorney of the Tishomingo Savings Inst. a conveyance purporting to convey to the assignees therein named all the estate, real and personal, notes, book accounts, choses in action, and every species of property or interest whatever owned by the assignors as partners or as individuals, except such property as may be exempt by law from execution or attachment, and directing the sale of the property and collection of whatever might be found due the defendants, and that after having reduced all to money as far as could be to first pay all the costs and expenses of the trust, including a reasonable attorney's fee to T. D. Young, who drew the assignment, for his services in drawing the same and for maintaining it if assailed; that then the remainder should be paid to the preferred creditors in the order named. This conveyance was signed ac-
268 knowledged and recorded in the proper clerk's offices. The proof of both R. C. Cates and D. Andrews shows that on the day the assignment was made, and shortly before, there was taken out of the safe of Andrews, Cates & Co. the sum of three thousand dollars, and was taken by Andrews to his residence, and on the

next day the same was sent by Andrews' father to R. C. Cates at Kossuth, and that some short time after this R. C. Cates paid to his wife one thousand dollars and delivered to Andrews one thousand dollars, and that he retained for his own use the remainder.

The proof further shows that R. C. Cates had not long before that time received from the firm of Andrews, Cates & Co. five hundred dollars, and that he had a day or two before the assignment was made received from Andrews seven hundred dollars for the sale of some Jersey cattle. Whether these cattle were the property of R. C. Cates or of Cates & Andrews is not satisfactorily shown, nor is it very material so far as it relates to the questions now presented for decision, as the assignment purports to convey all the assignors owned as partners and individuals.

The proof shows that when this assignment was made it was not intended upon the part of R. C. Cates that the money received
269 by him should go into the hands of the assignees, and Andrews and, I presume, Luke Cates must have had knowledge of that fact.

The proof further shows that about the same time Luke L. Cates took from the funds of Andrews, Cates & Co. one thousand dollars for his own use and not intended to go into the hands of the assignees.

It is also clear that the main purpose of making the assignment was to prevent the attachment of the assignors' property, and to secure a compromise with their creditors. I am further satisfied from the proof that the attorney of the Tishomingo Savings Institute had knowledge of this fact, or at least of facts sufficient to have put him on enquiry, which if prosecuted would have shown this fact, and knowledge of this fact by the attorney was knowledge by the bank. There is no proof that the bank or its attorney knew or had any notice to put them on enquiry, or to the withdrawal of the funds by R. C. Cates. I am satisfied that the main purpose for which the assignment was made, and with the purpose at the time that the money received by R. C. Cates should not go into the hands of the assignees and be applied to the payment of the debts due by the assignors, as the assignment purported it should be, renders the assignment fraudulent in fact.
270 Indeed, this fact is not seriously controverted by any of the defendants, but it is insisted that the proof does not show that the assignees or the beneficiaries knew that fact, and that therefore the assignment be held valid as to all those who did not participate in the fraud, and the case of Emmerson *vs.* Seuter, 118 United States Supreme Court Reports, is relied upon to sustain this position; that such is the rule of the United States Supreme Court in cases where the same rule is held by the supreme court of the State in which the assignment is made or in States in which the supreme court of the State has not held a contrary rule and in which such assignments have been made; and if it were not that the supreme court of this State has uniformly held that in such deeds of assignment the assignee is not a *bona fide* purchaser for a valuable consideration this rule would prevail in this case. The rule last referred to was announced by the supreme court of this State as late as the

case of Paine, assignee, *vs.* Aberdeen Hotel Company, 60 Miss. R., page 360, and has been the uniform holding of that court and the settled law of this State in relation to contracts and assignments of this character and will, I doubt not, be followed by the Supreme Court of the United States in regard to such contracts and
271 assignments made in this State, if such a case shall come before that court. This being so, the assignment in this case must be held fraudulent and void and renders the other grounds relied upon as rendering the assignment fraudulent and void unnecessary, and the property described in complainants' bill or the proceeds thereof, after the payment of the costs and expenses, applied to the payment of the debts due the complainants respectively according to their priorities; and to ascertain the amount due each and the priority of each the cause will be referred to the clerk or to a master to examine and report the same if necessary.

R. A. HILL, *Judge.*

272 *Decree.*

FRIDAY, *October 28th, A. D.* 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

Be it remembered that this cause came on to be heard this 28th day of October, 1887, before the Hon. R. A. Hill, judge, &c., upon bill, amended bill, answers, exhibits, proofs, and argument of counsel, which being duly considered by the court and the court being satisfied that the deed of assignment executed by the defendants, R. C. Cates, D. Andrews, and Luke L. Cates, as assignees; J. K. Herman, and F. G. Smith, dated December 7, 1886, mentioned in complainants' bill and exhibited therewith, was made in fraud of the rights of the complainants in the original bill and of all parties who have since filed their petitions asking to be made parties complainants to the original and amended bills, it is therefore ordered and decreed that said deed of assignment be declared and held fraudulent, null, and void as to the complainants in the original and amended bills and as to all parties who have become parties complainants by petition as aforesaid; and it is further ordered and decreed that the complainants in said original and amended bills, including all who have subsequently become parties complainants as aforesaid, have ac-
273 quired and hold a lien upon the real and personal property, notes, book accounts, and choses in action, whether described as belonging to said defendants in the name of Andrews, Cates & Co., Cates & Andrews, or in the name of said R. C. Cates, D. Andrews, and Luke L. Cates, or otherwise, in the order of priority as shown by the dates of filing said bill, amended bill, and petitions by which they severally became parties complainants to this suit; but the court not being sufficiently advised as to the amount of indebtedness due to each of said complainants, or whether against the defendants as composing the firm of Cates & Andrews or of An-

drews, Cates & Co., or of the property and assets of each of said firms, respectively, or of the defendants as individuals, it is therefore ordered that this cause be referred to W. H. Vasser to ascertain and report the amount due to each of said complainants or the firms composing the same, with the amount due from Andrews, Cates & Co. and that due from Cates & Andrews separately; also the property, real and personal, notes, accounts, or other choses in action, and, in case any of said property has been sold, the amount received therefor, and, if any of said notes, accounts, or choses in action have been collected or reduced to money, the amount thereof. Until the coming in of said report all other matters are reserved.

Ordered and decreed this October 28, 1887.

R. A. HILL, *Judge.*

274 *Decree.*

FRIDAY, *October 28th, A. D.* 1887.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

Be it remembered that on this day came on for further hearing this cause on the bill and amendments thereto, the interlocutory decree of this day rendered in this cause and the report of W. H. Vasser, commissioner appointed to make and state an account showing the amounts due the various complainants and whether the same was due from Andrews, Cates & Co. or from Cates & Andrews, and the priorities of complainants in said bill; said report of W. H. Vasser appearing to the satisfaction of the court to be correct and true, the same is hereby ratified and confirmed. It appearing to the satisfaction of the court that the original bill was filed on Dec. 8th, 1886, at 7 o'clock a. m., and that the complainants J. H. Allen, T. H. West, & J. C. Bush, partners in trade composing the mercantile firm of Allen, West & Bush, were the only complainants therein and thereby acquired a specific lien on all the property described in said bill for the payment of their debt; that the amount of complainants Allen, West & Bush debt is ($17,732.71) seventeen thousand seven hundred thirty-two & $\frac{17}{100}$ dollars, and that the same was due from the firm of Andrews, Cates & Co. and which is now directed first to be paid out of the funds as hereinafter directed, with 6% in-

275 terest per annum till paid. It further appears to the satisfaction of the court that there was amendment filed by said Allen, West & Bush on Dec. the 9th, 1886, at 11 o'clock a. m. describing particularly some property omitted in the original bill, including choses in action, notes, & accounts, which gave said complainants a lien on all said property and on the accounts of indebtedness owing from said parties so described from said date and hour, all of which is condemned to payment of complainants' debts. It further appears to the satisfaction of the court that A. & J. Trounenstein & Co. on Dec. the 8th, 1886, at 2.15 o'clock p. m., filed their petition to be made parties to said bill and acquired the next lien to complain-

ants in original bill. The amount due said A. & J. Trounenstein & Co. is $846.00, $506.00 of which amount was due from Andrews, Cates & Co. and $340.00 was due from Cates & Andrews. This amount shall be paid to them with 6% from this date till paid, after Allen, West & Bush shall have been paid and before any other creditors under said bill unpaid out of the funds as hereinafter provided; and it further appears to the satisfaction of the court that other complainants to said bill became parties thereto in the order herein named by petition filed as here shown for the following amounts due from the firms as here shown, to wit,

The Memphis Saddlery Co., creditors of Andrews, Cates & Co.,
276 Dec. the 8th, 1886, at 3 o'clock p. m., petition filed—am't due, $238.05; Richard Mason & Co., creditors of Andrews, Cates & Co., $42.35; of Cates & Andrews, $192.52; petition filed to be parties Dec. 8th, 1886, at 6.45 o'clock p. m.; total amount due, $234.87; Hill, Fontaine & Co., petition filed Dec. 9th, 1886, at 9 o'clock a. m., creditors of Andrews, Cates & Co., $3,700.00; of Cates & Andrews, $300.00; total amount due, $4,000.00; that the following three creditor firms' petitions to be parties were filed at the same time, to wit, on Dec. 9th, 1886, at 7.40 p. m., and they are entitled to equal priorities, and — there is not sufficient funds to pay them all in full the receivers are directed to pay on said three debts *pro rata* amounts according to the amount thereof—*i. e.*, 1, A. T. Shapleigh & Cartrell Hardware Co., creditors of Andrews, Cates & Co., amount due, $335.00. 2. J. & A. Simkinson, creditors of Andrews, Cates & Co., to the amount of $900.00, and of Cates & Andrews, $1,600.00; amount due, $2,500.00. 3. Bamberger, Bloom & Co., creditors of Andrews, Cates & Co., to the amount of $1,029.21, and of Cates & Andrews, $875.00; amount due, $1,904.21; the Bell Factory Company, petition filed Dec. 14th, 1886, creditors of Andrews, Cates & Co.; amount, $166.20. The receivers, W. J. Curtis and J. K. Herman, are hereby directed to pay off said amounts in the order as above given; in no case to pay to any subsequently named creditor anything until all the claims of all
277 named in this decree as prior to him have been paid in full, but the three creditors whose petitions were filed at the same time are to be paid at same time in full if sufficient funds are left after paying off the amounts of all the prior creditors, and, if not, then to be paid *pro rata* according to the amounts of their claims.

The receiver W. J. Curtis is now directed to pay off first the debt of Allen, West & Bush in full out of the assets of Andrews, Cates & Co. in his hands, if he has sufficient assets for that purpose, but if he has not sufficient assets of Andrews, Cates & Co., then he shall pay to said Allen, West & Bush what assets he has in his hands and shall notify J. K. Herman, the receiver of the assets of Kates & Andrews, and he shall pay off the balance of said debt, if sufficient assets are in his hands so to do, and so on with the other creditors of said firms, it being the intent and purpose, so far as consistent with the liens acquired by the respective complainants, to apply the assets of Andrews, Cates & Co. to the payment of the debts of said firm and the assets of Cates & Andrews to the payment of the debts of said

firm, but the receivers are directed to follow the order of priorities named in a former portion of this decree and to observe the same in the payment of the debts of said firms. The stock of goods, wares, and merchandise of Andrews, Cates & Co.
278 at Tupelo, Mississippi, more particularly described in the bill in this cause, and the proceeds thereof in the hands of the receiver, W. J. Curtis; the stock of goods, wares, and merchandise of Cates & Andrews at Kossuth, Mississippi, described in bill, and the proceeds thereof in the hands of J. K. Herman, receiver, and all the other personal property of every description and kind described in the original bill *is* condemned to the payment of complainants' debts and lien of complainants thereon acquired on the 8th day of December, 1886, at 7 o'clock a. m., *is* hereby enforced and perfected, and such of said property as has not already been sold by the receivers they are hereby directed to sell for cash as spe-dily as possible, at private or public sale, as in their judgment will best promote the interest to the creditors herein, and the receivers are directed to continue to apply the same to complainants' demands in the order and manner hereinbefore designated. It is further ordered, adjudged, and decreed that the following real estate is condemned to the payment of complainants' claims in the order and manner designated herein and is ordered to be sold for that purpose, and W. J. Curtis, receiver, is now appointed special commissioner to make said sale, which he shall do, after giving thirty days' notice of the time, place, and terms of sale by written or printed
279 notices posted at three or more public places in the county where the land is situated. He shall sell said land at such time and place as he may think best and in such parcels or tracts as he may think best for cash to the highest bidder. The land condemned to be sold is described as follows: One brick storehouse and lot in the town of Tupelo, in Lee county, known as the Murphy storehouse and lot, and more particularly described in a deed from J. M. Allen to L. L. Cates, D. Andrews, and R. C. Cates now on record in the chancery clerk's office of Lee county, to which reference is here made; fifty-three and one-third acres (53⅓ a.) off of south side of N. E. quarter of sec. 14, T. 10, R. 7 east, & fifty-three and one-third acres of the south side of the S. E. ¼ of sec. 14, T. 10, R. 7 east, in Itawamba county, Mississippi, and the following-described lands in Alcorn county, Mississippi: S. E. ¼ of sec. 10, T. 2, R. 5 east; S. E. ¼ of sec. 19, T. 2, R. 6 east; S. W. ¼ of sec. 31, T. 2, R. 7 east; E. ½ of N. W. ¼ of sec. 31, T. 2, R. 7 east; N. E. ¼ of S. E. ¼ of sec. 2, T. 3, R. 5 east; E. ½ of S. E. ¼ of sec. 3, T. 3, R. 6 east; one storehouse and lot fronting forty-four feet (44 ft.) on the street running east & west in the town of Kossuth, running north one hundred feet, west forty-four feet, south to street one hundred feet, in which Cates & Andrews lately did a mercantile business in the town of Kossuth, being in S. W. ¼ of sec. 26, T. 2, R. 6 east; N. E. ¼ sec. 6, T. 3, R. 5 east;
280 an undivided half interest in the W. ½ of sec. 36, T. 2, R. 5 east, and an undivided half interest in two acres in the town of Kossuth, in S. W. ¼ of sec. 26, T. 2, R. 6 east, known as the old

foundry lot, in said town. The following land, also in Tippah county, to wit: One hundred and seventy acres (170 a.), fully described in a deed from W. M. Pittman & Jack Pittman to R. C. Cates & D. Andrews, now on record in the chancery clerk's office in said county of Tippah, to which reference is made, and all the title and interest, both legal and equitable, of defendants R. C. Cates, D. Andrews, L. L. Cates, J. K. Herman, and F. G. Smith in and to all of said land is now divested out of said defendants and invested in said W. J. Curtis, commissioner, for the purpose of said sale and of making title to the purchasers; and the said W. J. Curtis shall pay the proceeds of said sale to the creditors herein, according to the priorities herein contained and designated; and complainants herein are declared to have a specific lien on all of said real estate from the date of filing of the original bill, to wit, from 7 o'clock a. m. on Dec. the 8th, 1886, which is now enforced, and the property condemned and subjected thereto and said lien perfected. It is further ordered, adjudged, and decreed that all the notes, accounts,
281 and claims mentioned and described in the amendment to complainants' original bill, filed on Dec. the 9th, 1886, at 11 o'clock a. m., be, and are hereby, condemned to the payment of complainants' demands and complainants declared to have a specific lien thereto from said 11 o'clock on the 9th day of Dec., 1886, which lien is now perfected and enforced, and the receiver W. J. Curtis is directed to pay to complainants herein, as heretofore directed, all moneys in his hands coming from the collection of said claims; and all of said debts are now condemned to the payment of complainants' demands as fully and completely as if they were here particularly set forth and described as they are in said amendment to said bill; and said receivers, W. J. Curtis and J. K. Herman, are also further directed to pay out of all monies in their hands realized out of collections of notes and accounts belonging to either of said firms complainants' demands, according to the priorities herein contained. It is further ordered, adjudged, and decreed that the receivers, before paying the amounts herein stated to be due complainants, *they* shall take from said complainants a bond, with good security, in the amount one-half of the amount paid, conditioned to refund to said receivers any amount of said fund that may be ordered to be
282 refunded by the order of this court in this cause in case the court decide that it was wrongfully paid out to said complainants and that complainants' demands were overpaid. It is further ordered, adjudged, and decreed that the Tishomingo Savings Institution pay the cost accrued in said cause by its becoming a party defendant, which is here fixed at one-fourth of the whole cost in the case to be taxed, for which execution may issue, and the said R. C. Cates, D. Andrews, and L. C. Cates pay the balance of the cost in this cause, for which execution may issue. It is further ordered, adjudged, and decreed that the receivers shall pay all cost accrued in this cause out of the assets in their hands. It further appearing that Gans, Arnold & Co. *et als.*, on the 27th day of this month, filed their petition in this cause claiming to be creditors of said de-

fendants, as therein stated; but, there not being time for the defendants to make answer thereto, it is ordered that this cause as to the claim set forth in said petition be continued until the next term of this court for such proceedings thereon as may be right and proper. It is further ordered that the commissioner to whom this cause is referred have further time to ascertain and report upon the other matters referred to him and not embraced in his report.

Ordered and decreed this October 29th, 1887.

R. A. HILL, *Judge.*

283 J. H. ALLEN *et al.* } 41.
vs.
R. C. CATES *et al.* }

From the proceedings and proofs in this cause the court finds the following facts: The defendants R. C. Cates, L. L. Cates, and D. Andrews were country merchants, doing business in the town of Tupelo, in this State, under the firm name and style of Andrews, Cates & Co., and at the same time said R. C. Cates and D. Andrews were country merchants, doing business in the town of Kossuth, in this State, under the firm name and style of Kates & Andrews. Both of said firms had become embarrassed and insolvent. Upon consultation the members of both firms concluded to call a meeting of their creditors for the purpose of obtaining from them a compromise of their indebtedness, but upon consultation with Col. Taylor, the president of the Tishomingo Savings Institute, to which institution the defendants Andrews, Cates & Co. were largely indebted, and with the attorney of said institution, it was concluded that to secure said compromise it would be best for the defendants to execute a general deed of assignment conveying or purporting to convey all the property, real and personal, and all the notes, books of accounts, choses in action, and everything held by them under either firm name or as individuals to assignees, making the Tishomingo
284 Savings Institute the first preferred creditor, then others in the order stated in the assignment. In persuance *to* this understanding and purpose the deed of assignment was executed by said defendants on the 7th day of Dec., 1886, and duly acknowledged and recorded in the office of the clerk of the chancery court of the county of Alcorn and Lee respectively, and the assignees named in the deed took possession of the property mentioned therein.

The day of the assignment, or within a day or two before, said Luke L. Cates took from the funds of Andrews, Cates & Co. the sum of one thousand dollars, which he has not accounted for and which it is presumed he did not intend to go into the hands of the assignee. At or about the same time said Andrews took from the funds of Andrews, Cates & Co. the sum of three thousand dollars and sent the same to said R. C. Cates at Kossuth, and soon after he received it gave back to said D. Andrews the sum of one thousand dollars, which has not been delivered to the assignees or accounted for and which it is presumed was not so intended to be delivered or accounted for, but to be retained by said Andrews for his own use.

Said R. C. Cates delivered of the sum so received from said Andrews to his wife one thousand dollars and retained the remainder for his own use. Said R. C. Cates claims that the money so given to
285 his wife was in payment of a debt due her. Said R. C. Cates had not long before that time received from the funds of Andrews, Cates & Co. the further sum of five hundred dollars, which has not been accounted for, and about the same time received the further sum of seven hundred dollars from said Andrews, which it is claimed was collected by Andrews for the sale of Jersey cattle, but whether they belonged to said Cates individually or to either of said firms does not appear. Neither of these last sums have been delivered to the assignees or accounted for. Other facts appear from the deed of assignment, pleadings, and proofs which need not be stated, as the foregoing are deemed sufficient on the grounds upon which the decrees in this cause are predicated.

R. A. HILL, *Judge.*

286 3d *Report of W. J. Curtis, Receiver. Filed April* 2, '88.

W. J. Curtis, receiver, appointed by your honor in the case of J. K. Allen *et al. vs.* R. C. Cates *et al.*, No. 41, begs leave to submit this his 3rd report of his doings with said estate in said cause.

This receiver charges himself with the following amounts collected since his last report, to wit:

		To amount on hand at 2nd report		$2,771 86
1887.				
April	18.	Albert Lawhorn	on acc't	8 00
"	"	John Morrow	" "	3 90
		Clem. Moore	" "	6 50
	29.	Whorton Bros.	" "	30 00
May	18.	Frank Mathews	" "	7 00
	21.	H. E. High	" "	45 30
	28.	Whorton Bros.	" "	30 00
Oct.	1.	R. D. Logan	" note	53 35
	29.	Thos. Baskin	" acc't	9 15
Nov.	1.	Henry O'Callaghan	" note	10 00
"	4.	W. D. McCarty	" ac't	25 00
"	12.	Don. Taylor, for L. B. F.,	" "	10 85
		W. L. Clayton	" "	26 10
	14.	Jas. Gillespie		26 30
		S. A. Matthews on trust deed		40 00
	18.	W. E. Baskin	" ac't	8 50
		John Kirby	" " in comp.	20 00
				3,131 81

287

		Am't forward		$3,131 81
Nov.	18.	S. M. Been on ac't		58 09
		" " int. on same		5 80
Dec.	17.	Lee Trapp on ac't		137 75
	22.	J. A. Thompson on ac't		66 40

	28. Frank McWhorton on ac't		39 60
	29. C. L. Deaton " note		34 00
1888.			
Feb'y	6. B. F. Francis " ac't		10 00
Jan.	—. J. A. Mobley " "		245 00
"	J. Y. Leatherwood " "		200 00
"	Norton & Elliott, rent of store, 11 mo.		183 33⅓
			$4,111 78⅓
1887.			
Dec.	—. Norton & Elliott, stock of goods & interest to date of collection	6,573 94	
	Total amount of land sales, as per my report filed herewith	3,125 50	
	Total	$13,811 22	
	Total credits on this report	745 84	
	Balance due on this report	13,065 28	
	Amount paid Allen, West & Bush, per order of court, out of this amount	11,399 31	
	Bal. on hand this date	$1,665 97	
	Am't from J. M. Clayton	59 78	
		$1,725 75	

288 The receiver prays allowances for the following sums disbursed on account of his estate, to wit:

1887.			
April	1. H. E. Curtis, for collecting		9 90
"	12. " " "		11 40
May	10. R. T. Robinson, tax on storehouse		10 00
June	13. Blank book		45
	14. Postage		30
Sept.	1. Express p'd for books to Corinth		50
Nov.	8. " " " " " Aberdeen		50
"	" " " " " from "		50
"	" W. D. McCarty, allowance for answer		2 90
	18. M. A. Tully, for 12 d's' riding		24 00
Dec.	12. Lee Trapp, allowance for answer		2 00
	31. C. D. McCrimmin, marshal's cost in U. S. court		22 10
1888.			
Mar.	8. J. L. Finley, paid amount of collections from J. A. Ballard, Jr., the same having been improperly collected by this receiver		197 30
	J. L. Finley, do. as to cotton, W. W. Thurmond		165 28
	Postage		30
	Total		447 43

	J. A. Blair, att'y's fees for advice & counsel about receivership	24 51
	Amount paid J. M. Martin for advertising land	13 00
	Amount paid J. Q. Robins, att'y's fees for collecting $445.00 from Lockwood & Mosby	45 00
	Amount paid J. H. Miller for advertising land sale and posters	9 00
	Amount paid R. D. Porter, clerk's cost in case of W. J. Curtis *vs.* Baskins Bros	19 90
	Amount paid my expenses to Corinth to make sale, $5.00, and expenses to Aberdeen to attend Federal court, $7.00	12 00
	Paid J. Q. Robins for advice & counsel about personal property, sale of goods, compromises, & collections in connection with receivership	100 00
	Total	670 84
289	Amount brought forward	$670 84
	J. Q. Robins, for assisting about sale of land, advertising same, making bonds for title to farms, houses, &c.	50 00
	J. Q. Robins, for making this report	10 00
	J. Q. Robins, for making report of sale of real estate and attending to confirmation thereof	15 00
		$745 84

This receiver, W. J. Curtis, has paid the following amounts out of the money in his hands as receiver to Allen, West & Bush, as per directions of the decree of this court rendered at October term, 1887, having first taken a bond from them approved by P. M. Sumy, United States commissioner:

1888.			
Mar.	31.	J. Q. R., att'y	$1,747 54
1887.			
Nov.	17.	J. Q. R., att'y	6,573 94
1888.			
Mar.	27.	J. Q. R., "	183 33⅓
"	"	" " land sale	2,149 50
"	"	" " "	300 00
"	"	" " from Leatherwood	200 00
"	"	" " " Mobley	245 00
		Total am't paid Allen, West & Bush	$11,399 31

290 Your receiver would show and state that he has collected on account of said estate and his office the sum of $4,461.39, the greater part of which was in small accounts and notes troublesome to collect and very annoying to your receiver; that the collec-

tion of these notes and accounts has consumed a considerable part of his time and attention, and asks for a liberal commission for the collection of the same.

That he sold the stock of goods, wares, and merchandise in bulk for $6,573.94; that your receiver devoted the whole and entire of his time and attention to the sale and disposition of these goods for the space — about one month; that he believes a good sale of the goods was made, and therefore asks for commissions on the amount of this sale as are given on sales of personal property.

That the lands sold were well advertised, and your commissioner used every effort to make them bring the best possible price, and therefore asks for such commissions on the amount of the sales thereof, which amounted to $3,125.50 in the aggregate, as are allowed special commissions for the sale of lands.

291 There are now in the hands of this receiver quite a number of small accounts and notes and some accounts and notes that are for considerable amounts, but are comparatively worthless, as the parties from whom they are due are insolvent in a large measure, and your receiver therefore suggests that he be authorized by a decree of this honorable court to sell out all of said claims or such parts thereof as he thinks proper and for the best interest of the estate.

Your commissioner here sums up his report and recapitulates the same as follows:

Total amount of collections	$4,461 39
" " " sales of goods	6,573 94
" " " sales of lands	3,125 50
Total amount paid Allen, West & Bush per decree	11,399 31
Bal. on hand at this time	1,725 75

292 And now, having fully reported, your commissioner and receiver prays that his account be allowed, and that he be given further time in which to complete his duties as receiver; and in duty bound will ever pray, &c.

STATE OF MISSISSIPPI, }
Lee County. }

Personally appeared before the undersigned, chancery clerk of said county, W. J. Curtis, receiver, who makes affidavit that the above and foregoing account is correct and true to the best of his knowledge and belief.

W. J. CURTIS.

Sworn to and subscribed this 31st day of March, 1888.

NORBIN JONES, *Clerk.*

293 *Decree Confirming Report of W. J. Curtis, Receiver. Filed April 12, 1888.*

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

Be it remembered that on this day came on to be heard this cause on report of W. J. Curtis, receiver of Andrews, Cates & Co., and it appearing to the satisfaction of the court that the report is in all things correctly stated and true and in nothing excepted to and properly made and stated, it is therefore ordered, adjudged, and decreed that said report be, and is hereby, in all things ratified and confirmed. The receiver, W. J. Curtis, is allowed the following commissions for his services up to the date of the filing of his report in this cause, to wit: On amount of collections he shall be allowed 7 % on the 1st $1,000.00 and 5 % on balance of $3,461.39, making commissions for collections, $243.05; on amount of sale of personal property 5 % on 1st $1,000.00, 2½ % on next $3,000.00, and 1 % on balance of $2,573.94, making commissions for sales of personal property of $150.73, and commissions on sales of lands, as special commissioner, of 5 % on 1st $1,000.00, 2½ % on balance of $2,125.50, making commissions on amount of sales of lands, as special commissioner, of $103.13, making total commissions allowed W.

294 J. Curtis, receiver, for services up to the date of this report of $496.81; which amount said receiver is hereby authorized and empowered to retain out of any moneys in his hands, and is directed to pay the balance of the money in his hands, as receiver of Andrews, Cates & Co., over to Allen, West & Bush in accordance with the decree rendered in this cause at a former term of this court, until this claim is fully paid off and discharged; but the assets in his hands of Cates & Andrews he is to pay in accordance with the decree rendered at this term in this cause on the motion of the creditors of Cates & Andrews, reserving costs & commissions out of the same as receiver, allowed and as adjudged in the said decree rendered on said motion, and as allowed by the decree confirming his report as receiver.

And said receiver is hereby directed and empowered to collect the balance of the debts due to said firm of Andrews, Cates & Co., and to collect the other assets of Andrews, Cates & Co., and may, if he decide best for the interest of the creditors of said Andrews, Cates & Co., sell the said notes and accounts or any part thereof after giving ten days' notice of the time, place, and terms of sale by written or printed notice posted in three or more public places in Lee county.

Ordered, adjudged, & decreed in open court this 12th day of April, 1888.

R. A. HILL, *Judge.*

295 *Decree Confirming Report of W. J. Curtis, Receiver, April* 12, 1888.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

Be it remembered that on this day came on to be heard this cause on the report of W. J. Curtis, receiver and special commissioner, appointed at the October term by decree of this court in this cause to sell land, and it appearing to the satisfaction of the court that said report is correctly made out and stated and in nothing excepted to, and that the land described in the decree has been sold by said special commissioner as directed in said decree, and that the sale was fairly made, had, and conducted, and the purchasers have complied with the terms of said sale and have paid the purchase-money, and that the commissioner gave them bonds for title to said land purchased by them; and it further appearing from said report that the following lands were sold after giving proper notice to the purchasers here indicated, to wit: One brick storehouse and lot in the town of Tupelo, in Lee county, known as the Murphy storehouse, and more particularly described in a deed from J. M. Allen to L. L. Cates, D. Andrews, and R. C. Cates, now on record in the chancery clerk's office of Lee county, to which reference is here made, was sold and struck off to J. H. Allen at the price and for the sum of
296 $1,987.50, and he was declared the purchaser thereof; that 53⅓ acres off of the south side N. E. ¼, sec. 14, T. 10, R. 7 east, and 53⅓ acres off of the south side of S. E. ¼ of sec. 14, T. 10, R. 7 east, in Itawamba county, was sold to P. Cates for $300.00 and he declared the purchaser thereof; that the following lands were all struck off to J. H. Allen and he declared the purchaser thereof, to wit, S. E. ¼, sec. 10, T. 2, R. 5 east, $10.00; N. E. ¼ of S. E. ¼, sec. 2, T. 3, R. 6 east, $20.00; S. E. ¼, sec. 19, T. 2, R. 6 east, $20.00; E. ½ of S. E. ¼, sec. 3, T. 3, R. 6 east, $17.00; N. E. ¼ of sec. 6, T. 3, R. 6 east, $35.00; all in Alcorn county, Mississippi; that the S. W. ¼, sec. 31, T. 2, R. 7 east, in Alcorn county, was sold and knocked off to Mrs. Emma Andrews for $155.00; that E. ½ of N. W. ¼, sec. 31, T. 2, R. 7 east, Alcorn county, was struck off to M. C. Kimmons for $50.00; that the storehouse and lot in Kossuth, described as the storehouse and lot in which Cates & Andrews lately did business in the town of Kossuth, fronting 44 feet south to the street running east and west, north 100 feet, west 44 feet, south to street 100 feet, for the sum of $391.00, was sold to S. R. Stribling; that the ½ undivided interest in the W. ½, sec. 36, T. 2, R. 5 east, was bid off — W. F. Wallace for $50.00, and *for* the ½ undivided interest in the old foundry lot in the town of Kossuth, being a two-
297 acre lot in S. W. ¼, sec. 26, T. 2, R. 6 east, was struck off to W. F. Wallace for $30.00; that the 170 acres in Tippah county, fully described in a deed from W. M. Pittman and Jack Pittman to R. C. Cates and D. Andrews, now on record in the chan-

cery clerk's office of Tippah county, to which reference is made, was struck off to W. F. Wallace and J. H. Allen for $60.00, and that all the sales were fairly made, and that the several purchasers have paid the purchase-money.

It is therefore ordered, adjudged, and decreed that said report be in all things ratified and confirmed, and said special commissioner is directed to make deeds to the purchasers, and upon distributing the funds as directed in the decree confirming his report as receiver in this cause shall be discharged from all further liability in the premises, but out of the money so collected he shall first pay all costs accruing on account of sale as allowed in his report as receiver in this cause.

Ordered, adjudged, and decreed in open court this 12th day of April, 1888.

R. A. HILL, *Judge.*

298 *Report of J. K. Herman, Receiver. Filed March* 28, '87.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } No. 41.

J. K. Herman, receiver in this case, begs leave to make the following report, to wit:

Your receiver has collected on accounts and notes ($65.75), as shown by statement, including the amount of one dollar and fifty cents received for one-half interest in old foundry building condemned as a nuisance and sold at public outcry.

Has paid out, as shown by statement hereunto attached, three dollars and sixty-five cents ($3.65), for which he holds receipts; has on hand out of last collection ($62.10).

Respectfully submitted Feb. 19th, 1887.

299 J. K. Herman, receiver of the effects of Cates and Andrews, charges himself with the following amounts received of said estate:

1887.		Dr.	Cr.
Feb'y 1st.	J. W. McAnulty paid on note	28 85	
" 10.	R. C. Dilworth, on account	20 00	
" 28.	J. A. Whitehurst, "	5 40	
March 2.	Forrest Lee, "	10 00	
" 12.	One-half interest in old dilapidated foundry building declared a nuisance and sold at auction	1 50	

Said receiver prays allowance for the following disbursements:

1887.			
Feb'y 3.	Cash paid J. M. Martin, ed. Corinth Herald, for receiver's notice in paper		50

Feb'y	3.	To bagging & ties for 1 b. cotton, Samps. Gurly	------	1 15
"	18.	Cash p'd taxes on land in Tippah county assessed to R. C. Cates & Pittman for 1886	------	1 90
"	"	Cost of sending money	------	10
			65 75	3 65
		Cash on hand	----	62 10
			65 75	65 75

300 *3rd Report of J. K. Herman, Receiver. Filed April* 11, 1888.

UNITED STATES OF AMERICA:

District Court for the Eastern Division of the Northern District of the State of Mississippi, April Term, 1888.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

To Hon. R. A. Hill, judge of said court, sitting in chancery at Aberdeen, Monroe county, Mississippi:

This receiver, J. K. Herman, charges himself with the following amounts received on account of said estate, to wit:

1887.		Balance on hand at last report	15 21
Feb.	1st.	Collection from J. W. McAnulty on note	28 85
"	18.	" " R. C. Dilworth " ac't	20 00
"	28.	" " J. A. Whitehurst " "	5 40
Mar.	2.	" " Forest Lughe " "	10 00
Mar.	12.	½ int. in old foundry house	1 50
"	21.	Collection from Jas. McElhanrion on ac't	4 15
"	26.	" " T. F. Dilworth " "	7 25
Apr.	23.	" " Levi Burgess " "	3 50
May	4.	" " John James, Sallie Gentry, & J. Gentry	5 10
Sept.	24.	" " L. C. Prather on ac't	6 50
Oct.	4.	" " M. A. Hammonds " "	20 30
"	15.	" " Mrs. J. A. Kerr " "	7 15
	19.	" " B. F. W. Lorly " "	14 65
Nov.	11.	" " S. J. Norton " note	8 64
			$158 20

301

1887.		Amount forward		158 20
Nov.	17.	Collections from Huggins & McPeters,	on ac't	30
"	"	" Joseph Crum,	" note	2 50
"	"	" H. A. Simmons,	" ac't	55
"	"	" R. C. Dilworth,	" "	14 63
		John Lusk,	" "	15 10
"		Joseph Crum,	" note	1 50
"		Henry Brock,	" "	2 50
	19.	Mrs. E. A. Morrison,	" "	1 80
	21.	Sam. & Cur. Marsh		27 00
	25.	Collections from F. Evans		68
"		Samps. Gentry rent		19 42
	29.	Collection from Mrs. Cross,	on ac't	1 50
Dec.	1.	" " Albert Mills,	on note	9 84
"	5.	" " Carson Kerr,	" ac't	6 65
	6.	" " Jack Jones,	" "	5 55
	9.	" " W. L. Wilhight,	" note	15 00
	13.	" " Tey. Taylor,	" ac't	4 12
	13.	" " McKimmons,	" "	2 50
	15.	" " Lee Burgess,	" "	35
	15.	" " J. H. Bird,	" "	16 80
	16.	" " Judson Robinson,	" "	35
	19.	" " Mrs. J. A. Kinmon,	" "	85
	23.	" " S. R. Stribling, note & interest for stock of goods to date		1,843 00
1888.				
Jan.	3.	Collection from J. W. McAnulty,	on note,	20 00
Jan.	11.	" " Edgar Wright,	" ac't,	2 80
Feb'y	20.	" " Miss Della Simmons,	" "	14 50
Mar.	6.	" " R. O. Lemons,	" "	50
"	"	" " Jas. Carlock, under sale by G. A. McClamrock, trustee		51 00
		" " Miss Elizabeth Vogles, under sale by G. A. McClamrock, trustee		46 75
				$2,286 34

302

		Forward		$2,286 34
Mar.	8.	Collection from Johnnie Mills,	on ac't	5 00
"	30.	" " rent from S. R. Stribling		91 65
Nov.	11.	" " S. J. Morton,	on note	17 35
		Total charges & receipts		$2,400 34
		Total disbursements on this report		59 38
		Balance on hand at this report		$2,340 92

This receiver, J. K. Herman, prays allowance for the following disbursements made on account of said estate, for which amounts he holds receipts, to wit:

1887.

			Amount paid J. M. Martin, notice to debtor	50
Feb'y	3.	Bagging & ties for 1 B. C.		1 15
"	18.	Cash paid taxes on land in Tippah Co		2 00
Nov.	11.	" "	stamped envelopes	55
		" "	for paper	50
"	15.	" "	" stamps	25
	16.	" "	" envelopes & stamps	28
	17.	" "	" stamps " "	1 00
	"	" "	" package envelopes	40
Nov.	"	" "	" stamps	10
Feb'y	9.	Cash p'd taxes 1887		32 50
Mar.	7.	" "	G. A. McClamrock, trustee, for advertising one horse	1 50
			Keeping 10 do., at 30 cts. p'r d.	3 00
			Selling do.	2 00
			Advertising 2 mules	1 50
			Keeping 2 mules 10 d's, at 30 cts. p'r d.	6 00
			Selling " "	2 00
Mar.	—.	" "	A. McClannon, Esq., cost in justice's court, suit against Jas. Crow	4 15
			Total disbursements	$59 38

303 The balance due on this report is, as is shown by the footings, *is* the sum of $2,340.92. Your receiver has collected in all during the administration of his office the sum of $796.52, the greater part of which amount was collected on notes and accounts of small amounts and due from sundry persons and were very difficult to collect and have consumed a considerable part of your receiver's time.

Your receiver sold personal property consisting of a stock of goods, wares, and merchandise for the sum of $1,843.13, which he thinks a good sale. The goods were sold in bulk after your receiver had been in charge of the same about one month trying to effect a sale of the same, during which month he devoted his entire time and attention to the sale of said goods, and believes he effected a good sale and made the goods bring all that could be gotten out of them, and therefore asks such commissions on this amount as is allowed receivers for sale of personal property.

304 *Recapitulation.*

Collections	$796 52
Sales	1,843 13
Balance on hand	2,340 92

Your receiver further states that out of the balance shown by this report to be on hand he has paid to Allen, West & Bush, after having been notified by W. J. Curtis, receiver, that there was not sufficient money in his (Curtis') hands to pay off said Allen, West & Bush by more than $4,000.00, the sum of $1,800.00, for which he holds the receipt of said Allen, West & Bush, and this amount from the balance on hand by this report shows a balance on hand at this time of $540.92.

The most of the notes and accounts now on hand are comparatively worthless and are for small amounts, and your receiver respectfully suggests that it would be best for the creditors to have said notes and accounts sold, as the collection of them, where collection is possible, will consume a considerable part of said notes and accounts.

All of which is respectfully submitted.

305 Balance on hand, $540.92.

THE STATE OF MISSISSIPPI, }
Alcorn County. }

Personally appeared before me, the undersigned, F. P. Morrison, chancery clerk of said county, J. K. Herman, who makes affidavit that the above and foregoing account is correct and true, to the best of his knowledge, information, and belief.

J. K. HERMAN, *Receiver.*

Sworn to and subscribed this 5th day of April, 1888.

F. P. MORRISON, *Clerk.*

306 *Order Approving Report of J. K. Herman, Apr.* 12, 1888.

J. H. ALLEN *et al.* }
vs. } 41.
R. C. CATES *et al.* }

Be it remembered that on this day came on to be heard this cause on the report of J. K. Herman, receiver of Cates & Andrews, and it appearing to the satisfaction of the court that said report is correctly made out and stated and in nothing excepted to, it is therefore ordered, adjudged, and decreed that the same be ratified and confirmed. Said receiver is allowed a commission of 10 % on the amounts of collections made by him, to wit, on $796.52, being $79.65, and is allowed 5 % on the 1st $1,000.00 and 2½ % on excess of sales of personal property, making total commissions for services up to date of this report to J. K. Herman, $150.61. It is further ordered that of the balance in the hands of said receiver he distribute in accordance with the decree rendered in this cause on motion of creditors of Cates & Andrews.

And it is further ordered that said receiver pay as costs to J. Q. Robins an attorney's fee of $15.00 for preparing this report and attending to the same.

Ordered, adjudged, and decreed in open court this April 12th, 1888.

R. A. HILL, *Judge.*

307 *4th Report of W. J. Curtis, Receiver. Filed Oct.* 30, 1888.

W. J. Curtis, receiver in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 41, in the hon. dist. court of the United States for the eastern division of the northern district of the State of Mississippi, begs leave to submit this his 4th report of his doings with said estate, to wit:

This receiver charges himself with the following amounts:

1888.

April —.	To balance on hand at last report, as shown by report	$1,785 75
	" ½ costs collected in settlement with J. K. Herman	146 57
	" proportional part of commissions and expenses collected from J. K. Herman	56 65
	Total receipts	$1,988 97
	Received from W. B. Long, she'f	63 00
	Total receipts	$2,051 97

And this receiver prays allowance for the following disbursements made on account of said estate, to wit:

	By this amount commissions allowed this receiver by decree of this court	$496 81
	Amount p'd J. Q. Robins for J. K. Herman, receiver, on account of sale of land of Cates & Andrews, Kossuth	488 00
		$984 81
308	By amount brought forward	$984 81
	" p'd G. R. Hill clerk's costs, p'd by J. Q. R.	65 85
	" p'd taking depositions, cost as taxed, p'd to J. Q. R. for W. C. McCord & A. W. & B.	59 50
	" p'd chancery court, cost as taxed, to J. Q. Robins for W. C. Bassonett & W. B. Long	95 45
	" paid cost of making transcript to J. Q. Robins for W. C. Bassonett	23 75
	" att'y's tax fee to J. Q. Robins	27 50
	" paid in settlement & compromise of the suit of Memphis Saddlery Co. *v.* S. A. Mathews, garnishee	150 00

1888.

July 6. By am't p'd W. D. McCarty, Jr., & Eugene Francis, court cost in cases of Fitz & Wilson 4 00

Oct. 6. By am't p'd W. D. McCarty, J. P. & Eugene Francis, court cost in cases of Stock, Parish & Green 5 25

Total disbursements $1,416 11

Total receipts $2,051 97

Total disbursements 1,416 11

Bal. on hand $635 86

By this am't p'd J. Q. Robins, att'y, for preparing this report 15 00

By this am't p'd J. Q. Robins, att'y for Allen, West & Bush 620 86

Balance on hand, nothing.

All of which is respectfully submitted.

J. Q. ROBINS,
Sol's for Receiver.

309 THE STATE OF MISSISSIPPI, }
Lee County. }

This day personally appeared before the undersigned, mayor of Tupelo and *ex officio* J. P. of said county, W. J. Curtis, who makes affidavit that the above and foregoing account is correct and true, to the best of — knowledge and belief.

W. J. CURTIS.

Sworn to & subscribed this 13th day of October, 1888.

W. C. BASKIN,
Mayor & ex Of'o. J. P.

310 *Petition for Appeal.*

UNITED STATES OF AMERICA, }
Eastern Division, Northern District of Mississippi. }

To the Honorable Robert A. Hill, judge of the United States district court for the district and division aforesaid, sitting at chambers:

The petition of R. C. Cates, L. L. Cates, and D. Andrews, individually and as composing the two mercantile firms of Luke Cates & Co. and Andrews, Cates & Co., and the said R. C. Cates and D. Andrews, as composing the firm of Cates & Andrews, and J. K. Herman, F. G. Smith, and the Tishomingo Savings Institution, respectfully represents to your honor that they feel aggrieved by the decrees rendered against them in this court April 14th, 1887, October 28th, 1887, October 29th, 1887, April 12th, 1888, in favor of J. H. Allen, T. W. West, & J. C. Bush, partners under the firm name

of Allen, West & Bush, in the cause lately pending on the equity side of said court, No. 41 on the docket thereof, wherein said Allen, West & Bush were complainants and these petitioners were defendants, said decrees being for a greater sum than $5,000.00, exclusive of interest and costs; and petitioners pray for an appeal from said decrees to the Supreme Court of the United States, at the next term thereof, and for citation to said J. H. Allen, T. W. West, & J. C. Bush, partners as aforesaid, or their solicitors of record, J. Q.
311 Robins, Esq., and John M. Allen, Esq., as required by law; and, as in duty bound, petitioners will ever pray, &c.

E. H. BRISTOW & W. B. WALKER,
Solicitors for Petitioners.

ALLEN, WEST & BUSH
vs.
R. C. CATES *et al.* } In Equity. At Chambers, April —, 1889.

On filing and reading the petition of R. C. Cates, L. L. Cates, & D. Andrews, individually and as composing the mercantile firms of Luke Cates & Co. and Andrews, Cates & Co., and said R. C. Cates and D. Andrews, as composing the firm of Cates & Andrews, J. K. Herman, F. G. Smith, & the Tishomingo Savings Institution for an appeal in the above-named cause, it appearing that the decree appealed from was for a greater sum than $5,000.00, exclusive of interest and costs, and that said decree was rendered within two years previous to this date, it is ordered that an appeal be granted them to the Supreme Court of the United States from the decrees rendered in the above-named cause, April 14th, 1887, October 28th, 1887, October 29th, 1887, and April 12th, 1888, in favor of said J. H. Allen, T. W. West, & J. C. Bush, partners under the firm name of Allen, West & Bush, on petitioners entering into bond for costs, payable to said Allen, West & Bush, in the penalty of $500.00, conditioned according to law, and that on execution & approval of said bond citation issue as prayed for.

Ordered at chambers this 26th day of April, A. D. 1889.

R. A. HILL, *Judge.*

312 *Appeal Bond.*

UNITED STATES OF AMERICA,
Eastern Division, Northern District of Mississippi.

Know all men by these presents that we, R. C. Cates, L. L. Cates, and D. Andrews, individually and as composing the firms of Luke Cates & Co. and Andrews, Cates & Co., and the said R. C. Cates and D. Andrews, as composing the firm of Cates & Andrews, and J. K. Herman, F. G. Smith, and the Tishomingo Savings Institution, a corporation of the State, division, and district aforesaid, as principals, and A. H. Taylor, J. W. Taylor, E. H. Bristow, W. B. Walker, and William G. Elkin, as sureties, are held and bound unto J. H. Allen, T. W. West, & J. C. Bush, partners under the firm name of Allen, West & Bush, in the sum of five hundred dollars; for the

payment of which, well and truly to be made, we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents. Signed and sealed by us, using scrawls for seals (the Tishomingo Savings Institution having no seal), on this 26th day of April, 1889.

The condition of this bond is such that whereas the above-bound principal obligors have prayed an appeal to the Supreme Court of the United States to the next term thereof from certain decrees rendered April 14, 1887, October 28, 1887, October 29, 1887, and April 12, 1888, by the United States district court for the eastern division of the northern district of Mississippi, in the cause
313 therein lately pending in equity of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 41 on the docket of said court:

Now, if said appellants shall prosecute their said appeal to effect and, if they fail to make their plea good, shall answer all costs decreed and to be decreed, rendered and to be rendered, in case said decrees be affirmed in said Supreme Court, then this obligation is to be void; otherwise to remain in full force and effect.

LUKE, CATES & CO. [SEAL.]
ANDREWS, CATES & CO. [SEAL.]
CATES & ANDREWS. [SEAL.]
R. C. CATES. [SEAL.]
L. L. CATES. [SEAL.]
D. ANDREWS. [SEAL.]
TISHOMING- SAVINGS INSTITUTION, [SEAL.]
By A. H. TAYLOR, *President.* [SEAL.]
F. G. SMITH. [SEAL.]
J. K. HERMAN. [SEAL.]
A. H. TAYLOR, *Surety.* [SEAL.]
J. W. TAYTOR, " [SEAL.]
E. H. BRISTOW. [SEAL.]
W. B. WALKER. [SEAL.]
WM. G. ELKIN. [SEAL.]

Approved April 26, 1889.

R. A. HILL, *Judge.*

314 *Assignment of Errors.*

UNITED STATES OF AMERICA,
Eastern Division, Northern District of Mississippi.

District Court. In Equity.

J. H. ALLEN *et al.*
vs.
R. C. CATES *et al.* } 41.

And the said defendants, by their solicitors, now come and say there is error in the record of the proceedings and decrees of the district court in the above-named cause for which the final decrees therein should be reversed. They therefore pray an appeal to the

Supreme Court of the United States, in order that said errors be reversed & corrected.

And they assign the following special errors, to wit:

1. The district court erred in overruling defendants' demurrer to complainants' bill of complaint by its decree of April 14, 1887.

2. The district court erred in rendering its decrees of October 28, 1887, October 29, 1887, & April 12, 1888, declaring fraudulent and vacating the deed of assignment of December 7, 1886, from R. C. Cates *et al.* to J. K. Herman and F. G. Smith, assignees, Exhibit B to complainants' bill of complaint in this cause, and adjudicating the proceeds of the property embraced therein to complainants.

3. Other errors apparent on the record.

For which said errors defendants pray that the above-named decrees appealed from be reversed.

BRISTOW & WALKER,
Solicitors for Defendants.

315 The foregoing 314 pages contain a true and perfect transcript of all the record, process, proceedings, and decrees & assignment of errors in the case of J. H. Allen *et al. vs.* R. C. Cates *et al.*, No. 41 on the equity docket of the United States district court for the eastern division of the northern district of Mississippi, as fully and completely as the same appears of record and on file in my office.

Seal United States District Court, Eastern Division, Northern District Miss.

Witness my hand and the seal of said court, at Aberdeen, this the 3 day of May, A. D. 1889.

G. R. HILL, *Clerk.*

Cost of transcript, $150.25, paid by appellants.

G. R. HILL, *Clerk.*

316 The President of the United States to the marshall of the northern district of Mississippi, Greeting:

Whereas, on the 14th day of April, 1887, the 28th day of October, 1887, the 29th day of October, 1887, and the 12th day of April, 1888, by decrees of the United States district court for the eastern division of the northern district of Mississippi, rendered on the several dates aforesaid, J. H. Allen, T. W. West, & J. C. Bush, partners under the firm name of Allen, West & Bush, recovered from R. C. Cates, L. L. Cates, & D. Andrews, individually and as composing the two mercantile firms of Luke Cates & Co. and Andrews, Cates & Co., and the said R. C. Cates & D. Andrews as composing the firm of Cates & Andrews, and J. K. Herman, F. G. Smith, and the Tishomingo Savings Institution, the sum of $17,732.71, in a suit then pending in said court, No. 41 on the docket thereof, and also procured an order from said court awarding to said complainants, Allen, West & Bush, more than $12,000.00 of the proceeds of the property in controversy in said cause, as also the costs of suit; and the said defendants having prayed & obtained an appeal returnable to our Supreme

Court of the United States, at Washington, on the second Monday in October, 1889, and given bond for costs:

We command you to cite the said J. H. Allen, T. W. West, & J. C. Bush, partners under the firm name of Allen, West & Bush, or J. Q. Robins and John M. Allen, their solicitors of record, to appear before said Supreme Court of the United States, in the city
317 of Washington, in the District of Columbia, on the second Monday in October, 1889, then and there to defend said appeal; and have then and there this precept before our said Supreme Court.

Witness the Honorable Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi, at chambers in Aberdeen, in said district & eastern division thereof, this 27th day of April, A. D. 1889.

R. A. HILL, *Judge.*

Attest: G. R. HILL, *Clerk.*

[Seal United States District Court, Eastern Division, Northern District Miss.]

318 [Endorsed:] 41. R. C. Cates *et al.*, appellants, *v.* J. H. Allen *et al.*, appellees. Citation. To be served on J. Q. Robins & Jno. M. Allen, Tupelo.

Marshal's fees:

47 x 6	2 62
Serving notice on J. M. Allen & J. Q. Robins, $2 each	4 00
Ent. & return	50
	7 12

BRISTOW & WALKER.

Executed May 3, 1889, by reading the within notice to J. M. Allen & J. Q. Robins at Tupelo, Miss., & delivering them a copy.
May 11, 1889.

J. A. BENTON, *U. S. M.*,
By JNO. T. BYNUM,
Deputy Marshal.

319 UNITED STATES OF AMERICA:

In the Supreme Court, October Term, 1889.

R. C. CATES *et al.*, Appellants,
v.
J. H. ALLEN *et al.*, Appellees.

Appeal from U. S. district court for eastern division of northern district of Mississippi. In Equity.

And the said appellants, by their solicitors, now come and say there is error in the record of the proceedings and decrees of the aforesaid district court in the above-named cause for which the final

decrees therein should be reversed, and they assign the following special errors, to wit:

1. The district court erred in overruling defendants' demurrer to complainants' bill of complaint by its decree of April 14, 1887.

2. The district court erred in rendering its decrees of October 28, 1887, October 29, 1887, and April 12, 1888, declaring fraudulent and vacating the deed of assignment of December 7, 1886, from R. C. Cates *et al.* to J. K. Herman & F. G. Smith, assignees, Exhibit B to complainants' bill of complaint in this cause, and adjudicating the proceeds of the property embraced therein to complainants.

320 3. Other errors apparent on the record.

For which said errors appellants pray that the aforesaid decrees appealed from be reversed and decree rendered in this court according to law and justice.

E. H. BRISTOW,
W. B. WALKER,
Solicitors for Appellants.

Endorsed on cover: Case No. 13,737. N. Mississippi D. C. U. S. No. 153. R. C. Cates, L. L. Cates, and D. Andrews, individually and as composing the firms of Luke Cates & Co. and Andrews, Cates & Co.; R. C. Cates and D. Andrews, as Cates & Andrews; J. K. Herman, F. G. Smith, and The Tishomingo Savings Institution, appellants, *vs.* J. H. Allen, T. W. West, and J. C. Bush, partners under the firm name of Allen, West & Bush. Filed October 12, 1889.

149 U.S. 481

Office Supreme Court U. S.
FILED.
NOV 5 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1892.

Term No. 153.

R. C. CATES, ET AL., APPELLANTS,

v.

ALLEN, WEST & BUSH, ET AL., APPELLEES.

Appeal from U. S. District Court for the Eastern Division of the Northern District of Mississippi.

BRIEF OF E. H. BRISTOW and W. B. WALKER,

FOR APPELLANTS.

E. C. TOOF & CO., PRS. & LITHS., MEMPHIS.

UNITED STATES OF AMERICA. } October Term, 1892.
IN THE SUPREME COURT.

R. C. CATES AND OTHERS, APPELLANTS,
v. } *Term No. 153.*
J. H. ALLEN AND OTHERS, APPELLEES.

Appeal from the United States District Court for the Eastern Division of the Northern District of Mississippi, sitting in Equity.

BRIEF OF E. H. BRISTOW and W. B. WALKER,

COUNSEL FOR APPELLANTS.

The questions at issue on this appeal are not complicated, though the record, owing to the intervention of numerous additional parties, and other causes, is somewhat voluminous. A large portion of the pleadings, evidence and decrees may be entirely disregarded. Briefly stated the case in this court on this appeal is as follows:

Appellants R. C. Cates and D. Andrews, citizens of the Northern District of Mississippi, Eastern Division, composing the firm of Cates & Andrews, and the same parties and L. L. Cates, also a citizen of said division and district, composing the firm of Andrews, Cates & Co., and said three parties as individuals, on the 7th day of December, 1886, made their deed of assignment for the benefit of creditors, copied on pages 10 to 15 of the printed record, whereby

they conveyed to Dr. J. K. Herman and F. G. Smith, as assignees, all of their property of every kind, except that exempt by law from levy and sale under execution or attachment by the laws of Mississippi, in trust for said assignees to take possession of the same and convert it into money, and with said money, after paying expenses of the trust, to pay the debts of said assignors or grantors as far as it would go; one Harkey, a creditor of Andrews, Cates & Co. for clerk's salary to a small amount, being the *first* preferred creditor, and the Tishomingo Savings Institution, a banking house of Corinth, Mississippi, a creditor of said Andrews, Cates & Co., being made the *second* preferred creditor, its debt amounting to a large sum; one S. W. Gardner, creditor of said Andrews, Cates & Co., being the third preferred creditor; and Allen, West & Bush, of New Orleans, appellees herein, creditors of said Andrews, Cates & Co., being the fourth preferred creditors. Other provisions were made for the other creditors of Andrews, Cates & Co., for the creditors of Cates & Andrews, &c., out of the assets assigned, which it is not necessary to specify. The deed of assignment contained the usual provisions of such instruments, was duly executed, acknowledged and recorded; the trust was accepted by the assignees named, who entered upon the discharge of their duties. Schedules of assets and liabilities were also prepared and filed with the deed of assignment.

On the 8th day of December, 1886, appellees Allen, West & Bush, residents of Louisiana, Missouri and Alabama, and doing business in New Orleans, Louisiana, as general commission merchants and cotton factors, filed their bill of complaint in the Chancery Court of Lee County, Mississippi, against R. C. Cates, L. L. Cates, D. Andrews, J. K. Herman and F. G. Smith, printed record, pages 1 to 15, in which they alleged that the firms composed of said three parties first named were indebted to said Allen, West & Bush in the sum of more than $16,000, by open account

mostly for money loaned, which was due and unpaid; and charged that the aforesaid deed of assignment, a copy of which was exhibited with the bill, was fraudulent in law and fact, made without any valuable consideration, with the fraudulent intent of delaying, hindering and defrauding the complainants and other creditors; and that the same ought to be set aside *and the property assigned subjected to the payment of complainants' demands.* (!) The bill further charges that F. G. Smith, one of the said assignees in said assignment, who at the time of the filing of the bill was in possession of a large part of the assigned property, consisting of a stock of merchandise of the value of $10,000, is insolvent, and it would be dangerous to allow him to remain in the possession and control of said property; that irreparable loss might thereby accrue to complainants; that said Smith is in possession of the books of account and choses in action of said assignors, and is proceeding to collect the same, whereby irreparable injury might result to complainants; that the entire claim of said assignees to said assigned property is fraudulent and illegal, and should be set aside, and the property applied to the satisfaction of *complainants'* demands.

The prayer of the bill is that the defendants be summoned to appear at the May Term, 1887, of the Chancery Court of Lee County, and answer all the allegations of the bill *under oath;* that said assignment be annulled and set aside as fraudulent, and the property assigned applied to the payment of the debt of *complainants;* that the assignees be restrained from acting under the assignment; that the personal property be sequestered and taken into possession by the sheriff; that a receiver be appointed to collect the debts due said assignors; that the filing of said bill be decreed to give complainants a first lien on all the property of said assignors; and that, subject to their prior lien, other creditors may be allowed to come in and make themselves parties complainant, &c. And they pray for

such other, further, different or general relief, as may be fit and proper.

Bond being given, a writ of sequestration was issued December 8, 1886, and under it on same day the sheriff took possession of the personal property, amounting in value to $10,700.99.

Defendants were served with subpœna December 20, 1886. A number of other creditors were, on their own application, admitted as co-complainants in this cause; printed record, pages 19 to 32. These parties have no connection whatever with the questions at issue on this appeal.

On December 15, 1886, said Allen, West & Bush and the other complainants filed their petition to remove said cause from the State Chancery Court to the United States District Court for the Eastern Division of the Northern District of Mississippi, alleging as grounds for removal, difference of citizenship and amount in controversy. Bond being given the same day, the cause was *ipso facto* removed.

On April 15, 1887, by order of the United States Court at Aberdeen, sitting for the Eastern Division of the Northern District of Mississippi, the Tishomingo Savings Institution was, on its own motion, admitted as defendant in said cause. Printed record, page 35. At the April term 1887, of said court, a demurrer was filed by all the defendants to the bill of complaint, setting up, first, that there was no equity on the face of the bill; second, that complainants' claims were simple contract debts, not reduced to judgment, and therefore complainants had no lien and were not entitled to file the bill; and third, want of proper parties. Printed record, page 36.

This demurrer was overruled and defendants required to answer within thirty days.

On April 13, 1887, defendants R. C. Cates, L. L. Cates and D. Andrews, filed their sworn answer denying all the material allegations of the bill of complaint, emphatically denying that the said deed of assignment was made with intent, or that its effect was to hinder, delay or defraud any creditors, and as emphatically asserting the good faith and honest effect of said assignment, they admit that F. G. Smith, one of the assignees, does not own property equal in value to the property assigned, but they aver that he is an honorable, upright and capable business man, able and willing if required to execute bond for the faithful performance of his duties as assignee.

The assignees, Smith and Herman, make answer on oath, denying all fraud, and adopting the answer of Cates *et al.*

The Tishomingo Savings Institution, by A. H. Taylor, president, answers on oath, adopting the answer of Cates *et al.*, averring indebtedness of Andrews, Cates & Co., and R. C. Cates, L. L. Cates and D. Andrews individually, to it of $10,000 or $11,000, specifying character of debt, the same being for money advanced said parties in their mercantile business, averring that said Savings Institution acquiesced in and accepted the assignment, and that said assignment was made honestly and fairly and in good faith for the purposes therein named, and denies that the same was made with any fraudulent intent, or for any other purpose than of honestly devoting the property of the assignors to the payment of their just debts. Printed record, pages 40 to 42.

By decree of court of December 21, 1886, receivers were appointed in said cause, to wit: W. J. Curtis and the said J. K. Herman. Printed record, page 44.

Depositions were taken of James H. Allen, appellee, and J. R. Harrell, his employee; printed record 47 to 80;

and of appellant R. C. Cates, pages 80 to 113; of D. Andrews, pages 113 to 124; A. H. Taylor, pages 125 to 135—all these witnesses called as witnesses for *complainants*, Allen, West & Bush *et al.*

On October 28, 1887, the court decreed the assignment to be fraudulent and void, and set the same aside and decreed the sum of $17,732.71 to be due said Allen, West & Bush, and said debt to be a first lien and charge on the assets of said Andrews, Cates & Co., and ordered the receiver to pay to Allen, West & Bush said sum of $17,732.71 out of moneys in their hands, the proceeds of sales and collections of assets of said Andrews, Cates & Co. Printed record, pages 141 to 149. There are other orders contained in said decrees, with reference to other funds and their appropriation to the claims of other creditors, but we pass them by, as the only appeal in this case is from the decree in favor of Allen, West & Bush, no one of the other creditors' claims amounting to the jurisdictional sum of $5000, and the claim of each creditor in said cause being a separate suit.

Stewart v. Dunham 115 *U. S.* 61.

An opinion was filed by the learned judge with the decree, which we will refer to in connection with a later branch of our argument. It is sufficient now to say that it is not sustained by the evidence, and if it were, it is wholly incorrect in its statements of law, as repeatedly decided by this court.

The report of the Receiver shows amounts paid to said Allen, West & Bush under said decree as follow:

Paid Allen, West & Bush by Curtis, receiver, printed record, page 151, ...	$11,399 31
Paid them by Curtis, receiver, page 159, . .	1,800
Paid them by Curtis, receiver, page 161, . .	620 86
Total amount received by Allen, West & Bush under the said decree, ...	$13,820 17

From these decrees of October 28 and 29, 1887, as far as the same are in favor of Allen, West & Bush, this appeal is prosecuted.

The errors assigned are two:

1. The overruling of defendants' demurrer to complainants' bill of complaint; and

2. The rendition of the decrees of October 28 and 29, 1887, declaring fraudulent and vacating the deed of assignment made December 7, 1886, by R. C. Cates *et al.*—Exhibit B to the bill of complaint—and adjudicating the proceeds of the sale of the property assigned therein to the complainants, Allen, West and Bush.

We will consider these points in their order.

I.

As a general proposition of law there is no doubt that the demurrer of the defendants to the bill of complaint is well taken and should have been sustained.

A simple contract creditor, who has not reduced his claim to judgment, has no standing in a court of equity as complainant in a suit to set aside and vacate a fraudulent conveyance; and a State statute, like section 1843 of the Code of Mississippi of 1880, conferring upon the State Chancery Court jurisdiction of suits by such creditors to vacate fraudulent conveyances, will not be adopted or followed by the United States Equity Courts.

Day v. Washburn, 24 *How.* 352.
Scott v. Neeley, 140 *U. S.* 106.

We can conceive but two reasons that can be suggested why this doctrine should not apply in this case, and consequently why the demurrer should not have been sustained, and they are:

1. That this suit was first instituted in the State Court which *had* jurisdiction, and therefore it *may* be contended the United States Court would acquire jurisdiction, though it would not have had *original* jurisdiction over the subject matter; and

2. That though the United States Equity Court would not have jurisdiction to set aside a fraudulent conveyance in a bill by a simple contract creditor; yet, under the allegations and charges of the bill in this case and the prayer for "different" and general relief, the United States Equity Court *would* have jurisdiction of the bill as one by a *cestui que trust* to administer the trusts of the deed of assignment.

The first reason we submit is wholly untenable; the second, we think, under the allegations and prayer of the bill, may be good.

And on the first reason:

There is no doubt there are cases where the United States Courts can acquire jurisdiction by removal thereto from State Courts, where the United States Courts would not have had jurisdiction if the suits had been originally brought there. But these cases are cases of jurisdiction over the *parties* and not over the subject matter, and proceed on the general principle that within constitutional limits consent *can* give jurisdiction over parties.

Barney v. Bank, 5 *Blatchford C. C. R.* 107.
Sayles v. Ins. Co., 2 *Curtis C. C. R.* 212.
Warner v. R. R. Co., 13 *Blatchford C. C. R.* 231.

But a mere statement of the results which would follow the adoption of the doctrine contended for is enough to show its utter untenability.

By a slight circumlocution the firmly established rule that in equity the United States Courts will not follow

State statutes or practice would be abrogated, and the United States Equity Court would stand on the same footing as the law court as regards following State law and practice.

In suits for divorce, under laws like that of Mississippi, in suits by parties *out of possession* of land against parties *in* possession, to remove clouds on titles, in suits against administrators or executors, either on official bond or otherwise, in suits by executors and administrators on promissory notes against debtors of a decedent, in suits to set aside probate of wills otherwise than for fraud (in all of which cases the statutes of Mississippi give Chancery Courts jurisdiction); in suits in all cases *ex contractu*, as in Tennessee, where chancery has this extended jurisdiction; in suits to remove the disability of minority, as in Mississippi, even in case of suits against a State in violation of the Eleventh Amendment of the Constitution of the United States, and in numerous other cases in which the United States Equity Courts have not jurisdiction, but the State Equity Courts have by special laws, all that would be necessary to evade this prohibition would be to *bring* the suit in the State Equity Court, and on the same day file petition and bond to remove the cause to the Federal Equity Court.

The cause, when removed, is to proceed in the same manner as if originally brought in the United States Court.

Revised Statutes U. S. sec. 639.
Railroad Co. v. Paine, 119 *U. S.* 552.
Suydam v. Ewing, 2 *Blatchford* 259.
Akerley v. Vilas, 2 *Biss.* 110.
Hurt v. Hollingsworth, 100 *U. S.* 100.
Thompson v. Railroad Cos., 6 *Wall.* 134.

In the case last cited, a suit at law in the Ohio State Courts was, upon removal into the United States Court,

changed into a bill in equity by leave of court. This court holding this to be error, in reply to the contention that the parties were in a manner *compelled* to proceed as in equity in the United States Court, say: "If this position were sound it would allow a Federal Court of Equity to entertain a purely legal action transferred from the State Court on the mere ground that if it were not done, the plaintiff would have to commence a new proceeding. It surely does not need argument or authority to show that the the jurisdiction of a Federal Court is not to be determined by any such consideration."

The Federal Equity Court will take hold of a cause removed to it from a State Court (where the jurisdictional citizenship and amount exist), and adjudicate it according to its own rules, restrictions and limitations; and will grant or deny relief accordingly as the complainant, under those rules, restrictions and limitations, may show himself entitled to relief. But having deliberately abandoned the State Equity Court, with all the special or peculiar benefits or advantages pertaining to that forum, and chosen to have his cause adjudicated by the United States Equity Court, whose modes of pleading, practice and procedure are more restricted and less liberal, he will not be allowed to demand from the United States Court, in the adjudication of his cause, all those advantages which he has thus voluntarily renounced. To use a homely adage, he must lie upon the bed he has made for himself.

2. But we submit that there *is* an aspect of this suit in which the Federal Equity Court *would* have jurisdiction of this cause, though the bill was framed with a view to other specific relief, and that is to consider this suit a proceeding in chancery instituted with a view to the due administration of the trusts of the deed of assignment.

Considering it in that light the bill here is filed by one of the *cestuis que trustent* against the assignors and the *trustees;*

it alleges, among other things, that one of the trustees is insolvent, and if he is allowed to retain and administer the trust assets, there is danger the same will be lost to the creditors, and irreparable injury result; they suggest a marshalling of assets among the creditors of the several assigning firms, &c. The prayer, among other things, is for a Receiver to administer the assets, and the concluding prayer is "for such *other*, further, different or general relief as shall seem fit and proper."

When the facts stated in the bill do not warrant the specific relief prayed for, but do warrant a different equitable relief, and where there is a prayer for general and "different" relief, the bill will be maintained for the different relief, even though the bill were not framed with a view to such relief. "If the *specific* prayer were insufficient, such a decree could be maintained under the prayer for general relief since it would be conformable to the case made by the bill."

Oteri v. Scalzo, 12 *Sup. Ct. Rep.* 895, 898.

We submit that in the absence of the jurisdiction in the Federal Equity Court to set aside the assignment as fraudulent and appropriate the assigned assets to the payment of the simple contract debt of Allen, West & Bush, the only legal pretext for retaining jurisdiction in the cause is the administration of the trust. And under the peculiar circumstances of this case and the length to which it has proceeded, this is all that can now be done.

A strikingly similar case in its legal principles is *Day v. Washburn*, 24 *Howard* 352.

As in this case, that was the question of an assignment for creditors attacked by a simple contract creditor, who charged the assignment to be fraudulent, and, as here, prayed that the assigned property be appropriated to *his* debt in preference to others. A demurrer was interposed,

but it failed to set up, what we set up in our demurrer, the failure of the complainant to show a judgment and execution as a fatal bar to the specific relief prayed. Other creditors intervened, as here, and prayed an equal division of the assigned assets. This the court granted, stating, however, in effect, that if the demurrer had set up the objection that complainants' demand had not been reduced to judgment and execution before filing the bill, even an *equal* division would not have been ordered, but this assignment upheld with all its provisions and preferences.

In the case at bar the demurrer *does* specifically set up the objection of want of judgment and execution, and consequently under the rule of *Day v. Washburn*, no relief could be granted whatever, except the enforcement of the trust under the prayed for general and "*different*" relief.

Adopting the language of Justice Nelson in *Day v. Washburn*: "Where a specific fund has been assigned or pledged for the benefit of creditors, the equitable lien of each creditor upon the fund lays a sufficient foundation for the interposition of the court. It will enforce this equitable lien thus arising out of the assignment for the benefit of the creditors, in the exercise of its own appropriate jurisdiction. But in all these cases, chancery, upon its own principles, distributes the fund *pro rata* among all the creditors, *unless preference is given in the assignment of the fund.*"

In that case, the objection of want of judgment not having been made in the demurrer, the court proceed to set aside the assignment as fraudulent (which they would *not* have done if the demurrer had set up the objection); but *even then* they divide the assets *equally* among *all* the creditors, refusing to grant any preference to the complainants on account of priority in suing, just as the court should have done in the case at bar if the demurrer had not set up the specific objection. But the objection *being* specifically

made by the demurrer in this case, there can be no legal setting aside of the assignment as fraudulent at the instance of these contract creditors, but the court must apply the assigned fund according to the *preference* of the assignment.

We think there is enough in the allegations, charges and prayers of the bill in the case at bar to give the court jurisdiction of the fund and the parties to enable it to enforce the provisions of the assignment. In fact, it appears from the record that nothing remains to be done but to appropriate the proceeds of the trust assets to the proper parties.

One of the assignees in the deed of assignment (Smith) having been discharged by the court, and the other assignee (Herman) and one Curtis having been made Receivers, and the assets having been turned over to them, and thoroughly administered by them and converted into money and prepared for distribution. there can be no possible use of commencing over again, reinstating the trustees, placing the assets in their hands, &c. The trust estate has been fully administered; nothing remains to be done but to pay over the money according to law. The money is legally in court, the parties are before the court, the rights are fully ascertained and recognized. There is no question of insufficient proof. It is now a pure question of law for this court. All that is now needed is a final decree correcting the erroneous disposition of the trust fund, and requiring restitution from those who have wrongfully received it, and ordering its payment to the beneficiaries in the assignment. There is no doubt of the jurisdiction of this court to make such a decree, even if the lower court had been utterly without jurisdiction in the premises.

N. W. Fuel Co. v. Brock, 139 *U. S.* 216.
Morris v. United States, 8 *Wall.* 507.

As a beneficiary under the deed of assignment, therefore, every creditor (including complainants, who are preferred in the deed) "has an equitable lien upon the fund" so conveyed to the trustees for the benefit of creditors; but this lien arises out of the assignment alone, and if the assignment is repudiated the lien is gone.

And thus much for our contention that the Federal Equity Court has jurisdiction to administer in this proceeding the trusts of the deed of assignment.

We submit that in the state of the case as appears from the record there is no use for a remand to the Circuit Court. This court has the entire record before it—the amount of trust money received by appellees, Allen, West & Bush, the amount due the preferred creditor, the Tishomingo Savings Institution, which is more than sufficient to consume the amount misappropriated by Allen, West & Bush (see printed record, pages 42, 43, 129 to 135), and all the data from which to render a final decree in conformity to justice and equity. We therefore respectfully pray that this court will make a final decree here, requiring appellees Allen, West & Bush to make restitution and to pay directly to the Tishomingo Savings Institution the sum of $13,820.17, shown by the record to have been wrongfully received by said appellees, as complainants in said bill, from the receivers or trustees therein, which in law, equity and good conscience should have been paid to said Tishomingo Savings Institution. This court has ample authority to pronounce here the final decree which the Circuit Court should have rendered below.

Wickliffe v. Owings, 17 *Howard* 47.

If, however, this court prefers acting through the Circuit Court, we respectfully ask a reversal and remand of the cause to the Circuit Court, with direction to that court to make decree of restitution. We may be pardoned for pressing this request, as by a simple reversal and

remand the litigation may be indefinitely prolonged and a second appeal probably required to settle the principles of the case, whereas a decision by this court, even to be carried out by the Circuit Court, will settle the whole case once for all.

3. But grant that this court may hold that as this case is presented by the bill, the Circuit Court had no jurisdiction of it, either to set aside the assignment as fraudulent or to administer its trusts as valid, and that *no* relief whatever can be granted under either the general or specific prayer, and that the decree will be simply sustaining the demurrer and dismissing the bill for want of jurisdiction over the subject matter; still we submit this decree will be accompanied by an order of restitution. Granting the Circuit Court had no jurisdiction in the cause, still the decree was made, and under it the complainants Allen, West & Bush wrongfully received, as appears from the record, the sum of $13,820, to which they were not entitled, and which in equity and good conscience belongs to the appellant Savings Institution. This court will not tolerate such injustice.

On the reversal of an erroneous judgment the law raises an obligation in the party to the record who has received the benefits of the judgment to make restitution to the other party for what he has lost.

Bank U. S. v. Bank Washington, 6 *Peters* 8.

And where the parties are all before the court, and the record shows the exact amount thus wrongfully received, the court will not relegate the wronged party to the tedious process of an action of assumpsit at law, but will at once decree restitution to be made, and that even though the Circuit Court had no jurisdiction over the case.

N. W. Fuel Co. v. Brock, 139 *U. S.* 216.

The court will not, as appears to be claimed by appel-

lees, reverse the decree of the Circuit Court and remand the cause to that court, with instructions to remand it to the State Court as *improperly removed* therefrom, and thus allow the appellant to try a round of experiments with the various courts. A remand to the State Court will only be ordered where the cause was improperly removed therefrom.

Was the case at bar improperly removed from the State Court?

The removal was made December 15, 1886, and was therefore governed by the second section of the act of March 3, 1875, which provides, "That [in] any suit of a civil nature at law or in equity, now pending or hereafter brought in any State Court, where the matter in dispute exceeds the sum or value of five hundred dollars * * * in which there shall be a controversy between citizens of different States * * * either party may remove said suit into the Circuit Court of the United States for the proper district."

Section 2 of said act provides the method of removal, viz: By petition filed in State Court before trial term, and a bond with sureties conditioned for entering in the United States Circuit Court a transcript of the record of the cause, and for paying costs, &c.; and then provides that after the filing of the petition and bond, the State Court shall proceed no further in the cause, and that "the cause shall then proceed in the same manner as if it had been originally commenced in the said Circuit Court."

The courts will not add to the conditions prescribed for removal. For instance, it has been held that under the act of 1875, a cause may be removed from a State Court to the Federal Court, when there is diverse citizenship and sufficient amount, even though the plaintiff is an *assignee* of the contract sued on, and the suit could *not*

have been originally brought in the United States Court.
Clafflin v. Ins. Co., 110 *U. S.* 81.
Warner v. R. R. Co, 13 *Blatchf.* 231.

The only fundamental conditions for removal are that there must exist a civil suit in law or equity, involving the sum or value of $500 or more, in which there is a controversy between citizens of different States.

All these conditions exist in the case at bar: There was a civil suit, either in law or equity (though possibly uncertain which), involving more than the sum of $500, and the controversy was between complainants Allen, West & Bush, citizens of Louisiana, and the appellants citizens of the Eastern Division of the Northern District of Mississippi. This is as much as the law requires. It does not require as a condition precedent to removal that the case of the *plaintiff* or *complainant* who prays for the removal shall be absolutely unassailable in point of law or fact, and thus make the *result* of the suit in the Federal Court the test of the legality of the removal. It does not, for example, require that the claim of a plaintiff suing a defendant on a promise to answer for the debt of another shall be, as a condition precedent to removal, evidenced by a writing signed by the defendant, though the statute of frauds provides that "*no action shall be brought*," whereby a defendant shall be so charged.

It does not require that a bill in equity shall make such a case for the complainant who seeks to remove the cause into the Federal Courts, as shall be absolutely good against a general demurrer for want of equity on its face. It does not even require that a bill in equity in a cause sought to be removed from a State Court shall set out such a cause of action as to retain its character as a bill in equity. If the cause sought to be removed is a *civil suit*, and the conditions of *citizenship* and *amount* exist, the Federal Court will accept the removal, and by ordering a repleader relegate

it to its proper position and character on its docket, and try and adjudicate it according to its rules of practice and procedure.

Foster's Fed. Practice, sec. 391 *and cases cited.*
Hurt v. Hollingsworth, 100 *U. S.* 100.

A party who, for any reason, is not satisfied with entrusting the adjudication of his cause to the State Court, and voluntarily invokes the intervention of the courts of the United States, and causes his suit to be removed to that forum, is presumed to do so with the full knowledge of the practice and procedure of his chosen tribunal. He seeks that forum deliberately and with his eyes open, and it will not be tolerated that after he has exhausted the resources of the United States Court, and has found that under its peculiar practice he can obtain no relief, he shall then be allowed to return to the State Court, and have a new trial there.

The courts will not tolerate experiments with their jurisdiction, and even where the citizenship is insufficient, they will be very reluctant to remand cases at the instance of those who have prayed for the removal.

Bushnell v. Kennedy, 9 *Wall.* 387.
Seward v. Comean, 103 *U. S.*

If a party plaintiff having instituted his suit in a State Equity Court, in which both legal and equitable rights can be adjudicated, chooses to abandon that forum and transfer his cause to the United States Equity Court, where the remedy is more restricted, he cannot complain of the narrowness of the latter court, but must accept the measure of relief which it can give him.

Railroad Co. v. Paine, 119 *U. S.* 561.

And if in his chosen forum he fails to establish his claim according to the system of jurisprudence established from time immemorial in that forum, he is in no condition to

ask that the cause be remanded to the State Court that he may have another trial.

In the case at bar complainants might have asked a repleader and changed their suit into a simple action of assumpsit *in personam*; they might have added a specific prayer to their bill (if they believed the general prayer insufficient), asking an administration of the trusts of the deed of assignment.

But they have persisted in retaining their bill as a bill in equity for the specific relief prayed for, viz.: the setting aside a deed of assignment as fraudulent in their favor as simple contract creditors. They cannot therefore complain if their bill be held to be without equity on its face, and dismissed with costs.

As we have said before the fact of a lawful removal of a cause to the Federal Court does not of itself necessarily involve a perfect case, or even a case over the *subject matter* of which either the State Court or the Federal Court has jurisdiction.

Every sustaining of a general demurrer in a chancery cause for "want of equity on the face of the bill" is practically an adjudication of want of jurisdiction. The two most usual grounds of demurrer to a bill in equity, viz.: that there is no equity on the face of the bill, and that the plaintiff has an adequate remedy at law, go to the foundation of equity *jurisdiction*.

Section 723 of the Revised Statutes of the United States provides that "suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law." Now take the case of a suit in equity brought under the statute of Mississippi (*Code* 1880, *sec.* 1833), by a party out of possession against a party in pos-

session of lands to remove clouds from the plaintiff's title. If such a suit were instituted in the United States Circuit Court the bill would be dismissed on demurrer for want of equity.

Whitehead v. Shattuck, 138 *U. S.* 146.
Holland v. Challen, 110 *U. S.* 15.

But suppose the suit originally brought in the State Court, and on application of complainant it is removed into the Federal Court, and *after the removal*, as in this case, a demurrer is interposed for want of equity in the bill, what would be the decree—a sustaining of the demurrer and dismissal of the bill, or a remand to the State Court? We think there can be no possible doubt as to the answer. The judgment of the court will be exactly the same as if the cause "had been originally commenced in the said [United States] Circuit Court."

Act March 3, 1875, *sec.* 2.

Almost precisely the same question was made, and *precisely* the same principle was announced by this court in the late case of *Marshall v. Holmes*, 141 *U. S.* 589. In that case the State Court refused a prayer for the removal of a cause therefrom to the United States Court, on the ground that there was *no equity on the face of the petition*, and that the averments thereof were insufficient or too vague to justify a court of equity in granting the relief asked; but this court say, on page 601: "The suit being, in its general nature" [*i. e.*, a civil suit, for sufficient amount, in which there was a controversy wholly between citizens of different States, which could be fully tried and determined between them, see page 592], one of which the Circuit Court could rightfully take cognizance, it was for *that* court, after the cause was docketed there, and upon final hearing to determine whether, under the allegations and proof, a case was made which, according to the established principles of equity, entitled Mrs. Marshall to protection

against the judgments alleged to have been fraudulently obtained."

Wherever, therefore, there is a suit, judicial in its nature and not a mere administrative proceeding, pending in a State Court, involving the sum or value of $500 (now $2000), in which there is a controversy between citizens of different States, which can be fully tried and determined between them, upon the filing of the proper petition and bond, the United States Circuit Court, *ipso facto*, acquires a permanent jurisdiction over the same, and will proceed to its final adjudication, whatever the result may be, whether a dismissal on demurrer to declaration or bill of complaint as setting out no cause of action, or a final judgment or decree on the evidence on the merits. Any *suit* involving the jurisdictional *amount* and *citizenship* can be removed to the Circuit Court under the act of Congress, and any such suit so removed will not be remanded to the State Court either for want of a sufficient cause of action or of evidence to sustain it.

Suppose the case of a bill of complaint filed in a Mississippi State Equity Court, by one *not even a creditor*, to set aside a conveyance by a third party as fraudulent, and suppose on the requisite showing of amount and citizenship this suit is removed into the Federal Circuit Court, and after removal, as in the case at bar, a demurrer were interposed for want of equity. The demurrer of course would be sustained. What decree would be rendered on the sustaining of the demurrer? one dismissing the bill with costs? or a decree remanding the cause to the State Court? We submit the answer is not difficult. The Circuit Court would proceed "in the same manner as if the suit had been commenced in that court," and dismiss the bill with costs.

If we are wrong in this, what, we would like to ask, is the meaning of the expression, "proceed in the same

manner," &c.? In what manner *does* the Circuit Court proceed where suits are commenced in it, in which no relief can be granted? Does it diligently search throughout the world of jurisprudence to find some tribunal in which the party *can* have relief, and have the cause transferred to it? We trow not! When a cause comes into the Circuit Court, either originally or by removal from State Court, the court proceeds to *adjudicate* it, and awards relief or refuses it, accordingly as the plaintiff may show himself entitled to it in law or fact. If any difference is made in cases brought to the Circuit Court by removal from the State Court, we would have the singular spectacle of the Circuit Court, after a legal removal on citizenship and jurisdictional amount concurring, proceeding to try the cause to ascertain if the plaintiff is entitled to relief, and if it should appear that there is an inherent legal defect in the cause as presented by him, or a failure of his proof to sustain the case presented, not denying the relief and rendering judgment for the defendant as in the cases *commenced* in the court, but sending the plaintiff back to the State Court to try a second experiment there, if peradventure *that* tribunal which he once repudiated might give him the relief he asks!

And thereby the act of Congress, by judicial legislation, would be furnished with a *proviso* or condition subsequent to which would destroy the whole force of the act. It would then read: "The cause shall then proceed in the same manner as if it had been commenced in the Circuit Court; *provided, however*, that if the complainant shall fail either in law or fact to show himself entitled to any relief, then the Circuit Court shall proceed no further, but shall remand the cause to the State Court, which shall proceed in the same manner as if the cause had never been removed therefrom."

We submit this is the *reductio ad absurdum*. We submit that the jurisdiction of the Circuit Court over removed

causes, where the jurisdictional citizenship and amount appear is full, complete and final, and it extends as well to the adjudication of issues on pleas in abatement or to the jurisdiction, or to decrees on demurrers in chancery for want of equity in the bill, or because of the existence of a remedy at law, as to the decision on a plea of *nil debet*, a special demurrer in chancery, or a final hearing on bill, answer and proof.

Jurisdiction cannot be made to depend on the *final result* of a cause. When a nonresident complainant in an equity cause begun in a State Court against a resident defendant, involving (before 1887) the amount or value of five hundred dollars, causes his suit to be removed to the United States Court under the act of 1875, he burns his ships behind him, and must live or die in his chosen forum. A "killing decree" for want of equity, alleged or proven, must be final. The complainant must submit to it. The defendant is in good conscience entitled to it.

We therefore respectfully submit that this cause having been legally transferred from the State Court will never be remanded thereto, but will finally be determined in the Federal Courts.

If this court should not see proper to render *here* the decree which the Circuit Court should have entered in the cause, but should remand the same to the Circuit Court, it will do so with instruction to enter the proper decree dismissing the bill and ordering restitution by complainants Allen, West & Bush, of the sum of $13,820.17, which the record shows they have wrongfully received, with legal interest, and decreeing that the same be paid to the Tishomingo Savings Institution, who are entitled to it under the provisions of the deed of assignment.

II.

But in the exceedingly improbable case that this court should hold the bill of complaint to be sufficient, notwithstanding the contrary doctrine announced in *Scott v. Neeley*, 140 *U. S. sup.*, and hold that a simple contract creditor may maintain his bill to set aside a deed of assignment as fraudulent, we confidently submit that the decree of the Circuit Court is erroneous, and that this court will reverse the same. In other words, even if complainants were judgment creditors, with *fieri facias* returned "no property found," and had filed this bill to subject thereto assets which had been fraudulently assigned, the evidence wholly fails to show any such fraud. It is a case of complete and total failure of proof. To so portentous a charge, "that roars so loud and thunders in the index," the proportion of testimony is insignificant, in fact, pitiful!

In this case there is an unsworn bill of complaint demanding an answer from the defendants *under oath*; printed record, page 4. The answers squarely denying the charges in the bill are all under oath. Printed record, pages 37 to 44.

To overcome the evidence of these answers, complainants must furnish the testimony of two competent witnesses, or one witness and corroborating circumstances. More than this, the material charges in the bill in this cause are of fraud, and fraud being against that presumption of honesty, which universally exists, the proof of it must be correspondingly strong and unanswerable. But when we come to examine the testimony in this cause, and especially when we examine that portion of it on which the learned judge below based his judgment that the assignment was fraudulent, we are simply amazed at the utter insufficiency of the evidence to prove fraud!

Here is a deed of assignment by the three parties, R. C. Cates, L. L. Cates and D. Andrews, merchants and part-

ners under two firm names, who feeling themselves unable to pay all their creditors in full, convey to trustees for the benefit of creditors all the property they own, except the small amount exempt by the laws of Mississippi from levy and sale under execution or attachment, the property assigned amounting to many thousands of dollars. In the exercise of that dominion over their property which the laws of Mississippi allow, and for reasons satisfactory to themselves, they provide for certain preferences among their creditors. This they had a perfect legal right to do.

Eldridge v. Phillipson, 58 *Miss.* 270.
Estes v. Gunter, 122 *U. S.* 450.

There is no doubt as to the existence and validity of the debt of the assignors in the deed of assignment to the Tishomingo Savings Institution and the other preferred creditors. They have not been assailed, and are conceded to be valid debts. The testimony shows that the Savings Institution's debt was preferred out of friendship and kindly feeling for financial favors extended by it to the assignors. The complainants Allen, West & Bush were preferred on account of their disposition to litigate all assignments in which they were not preferred. Printed record, page 108. Judging from their action in this case, it would appear to be their peculiar way to attack all assignments with general charges of fraud, in a kind of fishing bill, and then get up the particulars afterwards. The *animus* which inspired them in this case appears very plainly from the testimony of R. C. Cates introduced by complainants as their own witness, on page 110. He says: "Well, Mr. J. H. Allen, of New Orleans, is the only one that I ever spoke to about it, that I remember of. * * * I think then I told him that I thought I could get Col. Taylor to help us, though I had n't spoken to Col. Taylor in regard to it. *He said that he did n't think I did right in preferring Taylor to him.*" *Hinc illae lachrymae!* [Taylor was the President of the Tishomingo Savings Institution.]

As long as Allen, West & Bush were preferred, all was lovely! But the securing *another* creditor in preference to them became in *their* eyes a flagrant badge of fraud.

And so we see the charges in their bill are of the vaguest and most indefinite character. Nothing specific is set out. The only charge is that the parties, being indebted to various persons, "made or attempted to make a fraudulent, covinous and collusive transfer and assignment of all their property, both real and personal," &c.; "that said pretended transfer and assignment was made with the covinous, collusive and fraudulent intent of delaying, hindering and defrauding complainants * * * and if permitted to stand, will delay, hinder and defraud complainants," &c. From the beginning to the end the bill is simply a string of vituperative epithets, and nothing else. What *constitutes* the "fraud," what the "covin" *is, with whom* the "collusion" was, how *this* deed of assignment operates to hinder, delay or defraud creditors any more than every assignment for the benefit of creditors that ever was made; what peculiar claim these complainants Allen, West & Bush had on the assigned property which was fraudulently interfered with or impaired by the assignment, on all of these vitally important points the bill is as silent as death.

It must be borne in mind that it is the *deed of assignment* alone that is complained of in the bill; no charge of fraud, or covin or collusion or any indirection *outside of the deed*, is even hinted at. Boiled down, the bill amounts to this: That the debtors have made an assignment for the benefit of *all* their creditors, with a preference in favor of the Tishomingo Savings Institution, conveying to trustees for that purpose property which the bill coolly charges, "ought to be subjected to complainants' demands," which consists of an unsecured open account! For cool assumption we submit that this claim cannot be surpassed. See printed record, page 4.

The bill charges that the deed of assumpsit is "fraudulent in *law*." This charge, however, seems to be abandoned, as none of the provisions thereof are pointed out as contrary to law. The learned judge, however, bases *his* opinion of the fraudulent character of the deed on two points assumed by him to have been proven, to wit:

One is, that before the assignment one of the partners withdrew the sum of $3000 of the firm assets, on the pretense of repaying to his wife and to himself as administrator of an estate money due them; and

The other is, that the sole object of the assignment was not to appropriate the assigned property to the payment of the assignors' debts, but to fraudulently force the creditors to compromise.

The testimony in the cause was introduced by complainants. They made defendants R. C. Cates and D. Andrews their own witnesses, and are concluded by their testimony. Section 1944 of the Code of Mississippi providing for the examining of opposite party as witness against himself, with liberty to the party introducing him to contradict him, does not apply in the U. S. Equity Courts. By introducing Cates and Andrews as their own witnesses, complainants are bound by their own testimony.

Now, these witnesses testify that R. C. Cates withdrew the $3000 for the purpose of paying a debt due by the concern to Cates' wife, and to an estate of which he was an administrator. And even if this was a mere pretext, there is no doubt, from the proof, that L. L. Cates and D. Andrews honestly believed it was a bona fide transaction. Printed record, page 113. If there was fraud in the transaction it is only proven by one witness, R. C. Cates, and this is not sufficient to overcome the sworn answer.

But grant, for argument's sake, that the withdrawal of this $3000 by R. C. Cates for his own use was proven, what

effect would this have on the general assignment subsequently made?

Here is an assignment for creditors regularly made, conveying to an assignee *all* the property of the assignees not exempt, and specifying its purpose. There can be no doubt as to the *legal effect of the deed.* Its consideration, like that of all deeds of assignment for creditors, in addition to the nominal consideration of five dollars, is the purpose of its execution, i. e., the appropriation of the grantors' property to the payment of their debts. There can be no doubt that immediately on its execution and acceptance by the assignees all the property named became the property of the assignees with authority in them to sue for and recover the same wherever or in whosoever hands it might be.

The true tests of the validity of an assignment for creditors in law or fact are two, viz.:

1. Are the debts provided for valid and subsisting liabilities?

2. Does the assignor, either by the terms of the deed or by any secret collusion with the assignee or beneficiaries, reserve a benefit to himself?

If the first question can be answered in the affirmative and the second in the negative, the deed is good. In fact, as to the first question, it has been held in many courts that even the inclusion among the secured debts of a fictitious debt will not avoid the deed as a security for the valid debts.

Tracey v. Tuffly, 134 *U. S.* 206.

In the case at bar the debts secured and preferred are admitted to be valid debts. So the sole question is whether the assignors have reserved some ulterior benefit to themselves.

The rule in such cases, as abundantly established by this and other courts is, that a debtor may by assignment (in the absence of prohibitory statutes) prefer any one of his creditors, and if the deed *by its terms* devotes the assigned property to the payment of just debts, it makes no difference with what secret intent or expectation the deed is made, or how much it may operate to the damage of unpreferred creditors, or what secret withdrawal of assigned property the debtor may be guilty of.

Marbury v. Brooks, 7 *Wheat.* 556.
Same case, 11 *Wheat.* 78.
Tompkins v. Wheeler, 16 *Peters* 106.
Emerson v. Senter, 110 *U. S.* 3.
Stewart v. Dunham, 115 *U. S.* 61.
Morris v. Pearson, 79 *N. C.* 253.
Estes v. Gunter, 122 *U. S.* 450.

The learned judge below in his opinion draws a wrong conclusion from the admitted doctrine that in an assignment for creditors neither assignee nor beneficiary is a *bona fide* purchaser for value. This doctrine need only be invoked where there *is* any secret equity.

Surget v. Boyd, 57 *Miss.* 485.

Where a deed of assignment, by its terms, conveys to the assignee all the assignor's property (liable to his debts) for the benefit of the creditors named, and reserves no benefit to the grantor, *there is no fraud at all in the assignment*, and the beneficiaries take exactly as if they paid value for the deed. To make any act or omission a fraud, with reference to a deed of trust or assignment, it must pertain *to the deed* and be participated in by both assignor and assignee; else the *deed* is not affected by the fraud.

A grantor may *intend* all sorts of rascality, he may foresee all sorts of undisclosed fraudulent results, he may make the deed with the expectation of compounding a felony, (as in *Marbury v. Brooks*, *supra*,) or with the expectation

of stealing the assigned property from the assignee, &c. All this avails nothing, as against the *deed*, so long as the fraudulent intent is not embodied in the deed or joined in by the assignee or beneficiaries. No assignment for the benefit of creditors, valid on its face, can ever be rendered fraudulent by any act *in pais* of the assignor unless the assignee or beneficiary participate in it.

This court in *Emerson v. Senter*, 118 *U. S.*, *supra*, do not hold, as seems to be imagined by the learned judge, that the assignee and beneficiary could legally claim under a fraudulent deed. What it *does* hold is, that though they are not *bona fide* purchasers, yet a secret fraud or fraudulent intent of the assignor is *no fraud at all as regards the assignment*. A deed of assignment, valid on its face and honestly accepted by assignee and beneficiary, *cannot* be fraudulent. A *theft* of the assigned property by the assignor after the assignment is made, is, of course, a fraud on the part of the assignor, but it does not render the *assignment* fraudulent. A secret hiding out, or giving away of property which is subsequently included in the terms of a deed of general assignment, is no fraud in the assignment unless joined in by the assignee and beneficiaries. In either case the assignee owns the property, and if disposed to honestly carry out the assignment, he can sue for and recover the property for the uses prescribed in the deed of assignment. If the assignee knows of, and joins in the secret fraud, then the assignment *does* become fraudulent.

The case of *Estes v. Gunter*, 122 *U. S.* 450, cited *ante*, is an appeal from this same court, and is exactly in point. In that case, just before the assignment, the assignor not only conveyed a large part of his property by way of mortgage, with reservation of surplus to himself, but fraudulently (as was charged) paid $900 to his wife, and allowed her to withdraw large amounts of merchandise from the storehouse. It was claimed by counsel for the complainants, and held by the same learned judge who made the decree

appealed from in this case, that these facts rendered a deed of assignment, made immediately afterwards, fraudulent and void. This court reversed the decree, saying: "The assignment was *subsequent* to the deed [of trust] and carried all that could in any way be considered as a benefit secured by the deed to the assignor." And again, as to the fraudulent giving of the $900 to his wife, this court say: "Even if that payment were fraudulent, it would not vitiate a subsequent assignment. A fraudulent disposition of property does not of itself impair a *subsequent* general assignment. The assignee may sue for its recovery, and if successful, it will be for the benefit of the creditors precisely as if it had been included in the assignment," citing *Wilson v. Berg*, 88 *Penn.* 167, and *Reinhart v. Bank*, 6 *B. Mon.*, 252, *qu vide.* And again, as to the fraudulent withdrawal of merchandise, this court say: "If the supplies *were* excessive or unreasonable that fact would constitute no ground for setting aside the *subsequent* assignment."

It is the *deed* that must be the subject of criticism, either for fraud on its face, or for fraud *aliunde.* If that instrument reserves benefit to the grantor, or reserves in him any authority over the property after it is assigned, or attempts in any way to impose a falsehood upon the creditors to their prejudice, then the deed is fraudulent.

But to render the deed valid it is not necessary that the entire previous life of the grantor shall have been immaculate. There is no reason in law or common sense why a *previous* fraudulent act with reference to property shall invalidate a *subsequent valid* act, which, instead of *aiding* the fraud, serves to correct and defeat it. If, in this case, on December 1, 1886, R. C. Cates took $3000 of firm assets and hid it away, and subsequently, on December 7, 1886, he and his partners executed a deed to two assignees (wholly ignorant of the previous transaction,) conveying to them *all* their property, (which of course included the $3000,) how this *deed* (which gives the assignees authority

to demand and recover this $3000, and thus defeat the fraudulent conversion,) can be said to partake of the fraud of that previous transaction, is to us utterly unintelligible.

The Tishomingo Savings Institution, though not a purchaser for value, yet still, accepting the provisions of the trust, has the right to have the provisions of the deed carried out, and the assigned property appropriated to its claim, and the doing so in this case cannot in anywise prejudice the rights of others.

The fact that one of the assignors, before the assignment, unknown to the assignee and beneficiary, has withdrawn property included in the subsequent executed assignment, cannot deprive the legally preferred creditor of his rights under the assignment. On this point the courts are emphatic.

In *Truss v. Davidson*, 7 *Southern Reporter* 812, the Supreme Court of Alabama held that the fact that while a deed of assignment for the benefit of creditors was in course of preparation, the assignor, without the knowledge of the assignee or of the creditors, sold goods at reduced prices and failed to pay over the proceeds to the assignee, would not avoid the assignment. The court say: "The settled doctrine in this State is, that the fraudulent intent of the *grantor alone* will not avoid a deed of assignment to creditors unless the assignee or the creditors knew of or participated in the fraud." See also same court in *Globe Iron Co. v. Thatcher*, 6 *Southern Reporter* 366.

In *Moody v. Carroll*, 71 *Texas R.* 143, the court held that an assignment for the benefit of creditors is not vitiated by a fraudulent conveyance made by the assignor in contemplation of the assignment or at the time it was made. Such conveyance may be set aside by the assignee or by a creditor. See also

Blum v. Welborne, 58 *Texas* 162, 163.
Ferrel v. Farnum, 67 *Md.* 76.

State v. Adler, 97 *Mo.* 413.
Cureton v. Doby, 10 *Rich. Eq.* 411.
Rollens v. Shaver Wagon Co., 80 *Iowa* 380.

The Supreme Court of Mississippi have often held that a creditor in good faith accepting security for valid subsisting debts will not be affected by the fraud or fraudulent intent of the debtor offering the security.

Phillips v. Chamberlain, 61 *Miss.* 740.
Hirsch v. Richardson, 65 *Miss.* 227.
Eldridge v. Phillipson, 58 *Miss.* 270.

To the same effect and much stronger are the decisions of this court in *Emerson v. Senter*, 118 *U. S.* and *Estes v. Gunter*, 122 *U. S. supra.* The last named case is a Mississippi case, and presents the same state of facts as the case at bar; and this court properly held they did not vitiate the subsequent assignment.

We deem it unnecessary to dwell on this point. Under the law as repeatedly announced by this court, the withdrawal by R. C. Cates, one of the assignors, of $3000 or other property, under the pretext of paying a debt to an estate or to his wife, even if the pretext was purely fictitious, still in the absence of knowledge or participation by the assignees or creditors, cannot operate to vitiate the subsequent assignment.

The other reason suggested by the learned judge in his opinion for holding the assignment fraudulent, viz.: that the proof showed the object thereof to be *not* the appropriations of the assignors' property to the payment of their debts, but solely to fraudulently compel the creditors to compromise (!) we can hardly believe will be seriously insisted on in this court. The evidence to sustain it is so slight and trivial, so inconclusive in its nature, that, unless specially called attention to, the court would be apt to overlook it altogether.

It is founded alone on a portion of the testimony of R. C. Cates, one of the defendants and assignors, but made a witness by complainants who are bound by his testimony. The witness testified that the assignors had decided to make an assignment and prefer the Tishomingo Savings Institution and one Gardner, and so notified its president and one T. D. Young, the attorney who drew the deed of assignment. Printed record, pages 107 to 115. The witness R. C. Cates being alone with Young, remarked casually that he would have preferred calling a meeting of all the creditors and trying to arrange a settlement. Young simply remarked that he thought it best to make the assignment, and that thus they could get a better settlement afterwards, meaning simply that if all the creditors should be willing the assignment would not be in the way of a settlement, but would rather aid it. The assignors concluded to make the assignment, fearing if a meeting of the creditors should be called some litigious creditor, like Allen, West & Bush, might attach the property. The witness swears positively that the assignment was made alone for the purpose named on its face; that they had previously decided and promised to secure the Savings Institution and Gardner, and the sole question was how best to accomplish their object of applying their assets to their creditors with these preferences. The conversation with the lawyer Young was by R. C. Cates alone, and the other partners were not present and knew nothing of it.

As evidence to impeach the *bona fides* of the assignment, this testimony of R. C. Cates is objectionable for several reasons, viz.:

1. It is only the testimony of one witness, the only witness to the point. The bill of complaint requires answer *under oath*, and the answer is sworn to denying all fraud. Each charge or item of fraud must therefore be proven by two witnesses, or one witness and corroborating circumstances.

2. R. C. Cates, being one of the grantors in the deed of

assignment, is estopped to disparage the title which he has thereby conveyed.

3. The testimony is incompetent as seeking to contradict or vary the terms of a written deed by parol testimony.

4. And lastly, the proof is altogether insufficient to establish a charge of fraud. It was simply a casual conversation between one of the assignors and the attorney who prepared the assignment, in which the attorney suggested that the execution of the assignment would not necessarily prevent a compromise if all the creditors were willing, but would rather assist it, all of which was literally true. But the same proof shows, as also does the deed, that the parties deliberately adopted the plan of making an assignment and preferring creditors as provided in the deed.

The assignment speaks for itself and announces its own intent and purpose.

We are fully aware that any argument upon the *bona fides* and validity of the assignment on the appeal is superfluous, for we cannot conceive how, under the circumstances of this case, this court can ever get that far. Our sole object is to give this court a brief statement of the legal question involved, and to exhibit the exceeding weakness of the case made by complainants below, on which the decree of the court there was founded. No intelligent court, we submit, could be greatly tempted *ampliare jurisdictionem* in order to set aside as fraudulent such a deed of assignment as that in the case at bar. But were the proof of fraud overwhelming, still under the old statute of 13 Elizabeth (of which section 1293 of the Mississippi Code of 1880 is but a copy), fraud is *not* fraud except as it affects some one entitled to complain of it; and a simple contract creditor is not such an one. Only creditors who have *judgment liens* and *executions* can be heard in the Equity Courts of the United States to complain of covinous and fraudulent conveyances. In fact since the well considered opinion of this court in *Scott v. Neeley*, 140 *U. S.*, *supra*, it

is probable the Supreme Court of Mississippi will hold section 1843 of the Code of 1880 invalid and inoperative under the existing *State* Constitution.

See *Scott v. Vandegrift Shoe Co.*, 10 *South. Rep.* 453.

On this appeal we submit the only character of decree this court can render is—

1st. A final decree *here* reversing the decree of the lower court and administering the trusts of the deed of assignment under the general prayer of the bill of complaint, by ordering restitution to be made by the complainants Allen, West & Bush of the amounts wrongfully received by them from the Receiver in this cause, and the payment of the same to the Tishomingo Savings Institution, which is entitled thereto; or,

2nd. A decree reversing the decree of the lower court and remanding the cause to the Circuit Court with instructions to enter a decree administering the trusts as above; or,

3rd. A simple decree reversing the decree of the lower court, sustaining defendants' demurrer to the bill of complaint, and dismissing the bill with order of restitution, etc., as above; or,

4th. Finally, a simple decree, reversing the decree of the lower court and remanding the cause to the Circuit Court, with instructions to sustain the demurrer, dismiss the bill, and order restitution as above.

We most respectfully ask of this court that it will do something more than a mere reversal and remand.

The result of so restricted action would be to greatly prolong and confuse the litigation. The court is now in possession of the whole case, and is in position to terminate the contest as equity and good conscience would suggest. By adopting the *first* or the *third* of the methods suggested above, this case can now be finally determined, leaving it, if necessary, to the Circuit Court to decree as to costs and minor matters of detail.

Respectfully submitted, E. H. BRISTOW,
W. B. WALKER,
Counsel for Appellants.

Aberdeen, Miss., October 1, 1892.

E. H. Bristow

W. B. Walker

149 US 451
149 U S 451

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IN THE

Supreme Court, United States of America.

OCTOBER TERM, 1892.

R. C. CATES AND OTHERS,
Appellants,
vs.
J. H. ALLEN AND OTHERS,
Appellees,
} TERM No. 153.

BRIEF OF JOHN M. ALLEN,

Counsel for Appellees.

GEO. R. GRAY, PR.

IN THE

Supreme Court, United States of America.

October Term, 1892.

R. C. CATES and others, *Appellants*,
vs.
J. H. ALLEN and others, *Appellees*.
} Term, No. 153.

BRIEF OF JOHN M. ALLEN.

I will content myself with the history of this litigation given in the brief of appellants' counsel. The bill was filed in this case in the State Chancery Court under sections 1843, 1845 of the code of 1880 of Mississippi, which sections read as follows:

"SEC. 1843. The said courts shall have jurisdiction of bills exhibited by creditors who have not obtained judgments at law, or having judgments, have not had executions returned unsatisfied, to set aside fraudulent conveyances of property, or other devices resorted to for the purpose of hindering, delaying or defrauding creditors; and may subject the property to the satisfaction of the demands of such creditors, as if complainant had a judgment and execution thereon returned 'no property found.'"

"SEC. 1845. The creditor in such case shall have a lien upon the property described therein from the filing of his bill except as against *bona fide* purchasers before the service of process upon the defendant in such bill."

The first question presented in this case is one not altogether free from difficulty, and one which has not, so far as I am aware, been directly passed upon by this Court. That is the question as to whether or not the United States Equity Court will entertain a suit properly begun in a State Chancery Court, and removed in accordance with the laws for removal of causes from State to Federal Courts, where the Federal Court would not have taken original jurisdiction. I am aware that since the final decree in the case under consideration that in the case of Scott *vs.* Neely (140 U. S. Reports, p. 106), this Court has decided that a simple contract creditor can not avail himself of the rights given by sections 1843 and 1845 of the code of Mississippi by filing a bill in the United States Court. If the principles laid down in this case are applicable to removed cases, it would seem to settle the jurisdictional question against us. I cannot believe, however, that this case is necessarily controlled by the reasoning in the case of Scott *vs.* Neely. We have here a case properly brought and cognizable in the Chancery Court, of Lee county, Mississippi. If the allegations of the bill were true it entitled us not only to have the assignment set aside but gave us a lien on all the property assigned from the filing of the bill, and entitled us to a decree for the amount of our debt, to be satisfied out of this property.

Now, then, being citizens of different States, from the appellants, the defendants below, and having a controversy with a sufficient amount in controversy, we were entitled under the removal statute to remove the case to the United States Circuit Court, and this we did. Now the question is: did we forfeit any of our rights by this removal?

Does the law give us the right to remove and then destroy every right we had in the State Court by the removal? I am sure this cannot be the law. Counsel for the appellants

admit that there are some cases of which the Federal Court would not have had original jurisdiction where they do acquire jurisdiction by removal, and they cite the following cases in support of this position.

Barney *vs.* Bank, 5th Blatchford, C. C. R., 107.
Sayles *vs.* Insurance Company, 2 Curtis, C. C. R., 212.
Warner *vs.* R. R. Co., 13th Blatchford, C. R. R., 231.

I have examined these cases but I do not find that they disclose the distinction in principle between them and this case.

This Court has said time and again that a person loses no right by coming into the United States Court. If this be true, we have certainly lost none. We have the right in the State Court to try the issues raised by our bill and to have a decree condemning the property and giving us our money if we proved our case. Now we had the right of removal. Did we loose our other rights by exercising the right of removal? Suppose the petition for removal had been made by the defendants in the Court below. Who can say they were not entitled to remove their case to the United States Court? Then if they had the right of removal, could they remove a case from a Court in which their adversary had a good case to a Court where by the act of removal the case was destroyed? This could not be. If such were the case it would furnish a new method of defense. Then so far as the proceeding in the United States Court is concerned, it makes no difference which party removed the case.

The conclusions reached by this court in the case of Scott *vs.* Neely were founded on the judiciary Act of 1789, defining the jurisdiction of Equity Courts and the further reasoning that to enforce the Mississippi statute in the United States Equity Court would be to deprive parties of their constitutional right to a trial by jury. I recognize the soundness of the reasoning in that case, based on the Federal statutes defining the jurisdiction of Equity Courts; but it does seem to me that the removal statute being an enactment of equal dignity, and of a later date amounts to a modifica-

tion of the Act of 1789, which would give the United States Equity Court jurisdiction to try and dispose of this case.

So far as the constitutional objection, that the appellants were deprived of the right of trial by jury is concerned, I do not think can avail the appellants in this case. I do not understand that because a case is tried on the Equity side of the docket, that a party is necessarily deprived of the right to try an issue properly tryable by a jury.

It is no uncommon thing in the practice in the Federal Court in our State for the judge to summon juries to try issues out of chancery. I have known it done frequently in my limited practice. In this case the appellants made no demand or intimation of the desire to have any question of fact passed on by a jury. It is true they filed a demurrer in the Court below. Whether this demurrer was filed before or after their answer, I have no means of knowing (as the dates of the filing of the papers are not given in the record), except from the appellants' brief, from which I see that the demurrer and answer were sworn to before the same officer on the same day; and that the demurrer was overruled on the 14th day of April, and the answer filed on the 13th.

The errors assigned by appellants are: First that the District Court erred in overruling defendants' demurrer to complainants' bill of complaint. Second, that the Court erred in its final decree declaring fraudulent and void the deed of assignment.

Now, the first ground of demurrer was that there was no equity on the face of the bill. As to this first ground the appellants' counsel seem to occupy rather an inconsistent position. While claiming that the bill should have been dismissed for the want of equity on the face of it, they are now claiming that there is equity enough on the face of it to authorize the Court to retain the case, administer the assets and deprive the complainants in said bill of all the relief they ever sought or asked. I stop here to propound the query as to when there ceased to be equity on the face of the bill. When the bill was filed it evidently had much equity on the face of it,

and the question is, did the equities die with its removal? If the position of counsel for appellants is correct, that there is a case made by the bill upon which the United States Court could render a decree other than a decree of dismissal, they are necessarily wrong in insisting that either ground of demurrer should have been sustained because both grounds of demurrer are to the whole bill. The second ground being that because the claims of complainants had not been reduced to judgment they had no lien, and were not entitled to file a bill under the law.

As has already been shown, it was not necessary they should have a judgment in order to file the bill in the State Court, and they did acquire a lien by the filing of the bill in the State Court if the allegations in the bill were true.

Now the question again arises: If the complainants had, as they did have, a lien on this property from the filing of their bill, when did they loose this lien? Did they forfeit it by removing their case to the Federal Court? If they did not, they have it yet and must retain it until the allegations of their bill are found to be untrue or the bill dismissed.

It will be observed from reading the demurrer in this case that the demurrer was never aimed at the jurisdiction of the United States Court, but was aimed at the bill as originally filed, and it seems that this being a case properly brought in the Chancery Court of the State, if it were true that it was removed to a Court where the relief to which the parties were entitled could not be administered, that the only way to take advantage of that fact would be by motion to remand to the State Court. It cannot be that an absolutely good and meritorious case under the laws of the State of Mississippi can be destroyed by a removal to the Federal Court. So far as the record discloses, the appellants made no demand for a jury trial, and no objection to the jurisdiction of the Court. This Court has repeatedly enforced rights given by State statutes where such rights amounted to an enlargement of the jurisdiction of the Equity Courts.

I have known several cases tried in this Court growing

out of the jurisdiction given to Equity Courts by the Mississippi Statutes. In one of these I was counsel; the case of Ware *vs.* Allen. 128 U. S. 590

This was an attachment in Chancery, and embraced a purely legal demand. It was a case brought in the State Court and removed to the Federal Court. The point of a want of jurisdiction in the United States Equity Court was not raised by counsel in the case; but was raised by this Court on the trial of the case here. They retained the jurisdiction and disposed of the case on its merits. In a case cited in appellants' brief: the case of Stewart *vs.* Dunham 115 United States, p. 61.

This was a case in many respects like the one now before the Court. It was a bill filed under the same Mississippi Statute in the State Chancery Court on a simple contract debt to set aside an assignment on the ground of fraud; a case removed to the United States Circuit Court; a case tried upon its merits in the Court below, and appealed to this Court and tried on its merits here. It is true the question of jurisdiction of the Court was not raised in that case, but this Court disposed of it without any suggestion of a want of jurisdiction. In Broderick's Will 21 Wallace 503; Holland *vs.* Challen, 110 United States 15; Reynolds *vs.* Crawfordsville, Bank 112 United States 410, Ex. Parte McNeil 13, Wallace 243, and a number of other cases, this Court has held, that while a State Court cannot directly enlarge the equitable jurisdiction of the Circuit Courts of the United States, nevertheless an enlargement of equitable rights may be administered by the Circuit Courts as well as by the Courts of the States, and in *ex parte* McNeil 13 Wallace 243, I find this language.

"It is urged further that a State law could not give jurisdiction to the District Court. That is true. A State law cannot give jurisdiction to any Federal Court; but that is not a question in this case. A State law may give a substantial right of such a character that where there is no im-

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The answer to the bill was sworn to only by R. C. Cates. R. C. Cates and D. Andrews were both examined as witnesses and both testify to facts which show that they did not intend to do what the assignment purported to do; that was to turn over all their assets for the benefit of their creditors. On p. 107 of the Record, in answer to interrogatories 152, 153, and 154, Mr. Cates discloses the motives which prompted him to make the assignment which he says was to get a compromise of his debts and he was advised to do this by Mr. Young, who was his attorney and also the attorney for the Tishomingo Saving's Institution. And in answer to interrogatory 381, on p. 113, the testimony of both Cates and Andrews also dis-

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pediment arising from the residence of the parties, the right may be enforced in the proper Federal tribunal whether it be a Court of Equity, of admiralty, or of common law. The statute in such cases does not confer the jurisdiction. That exists already and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our national jurisprudence. A party forfeits nothing by going into a Federal tribunal. Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper State tribunal of the same locality."

If it be true as stated in this case that it is an axiom in our national jurisprudence that a party forfeits nothing by going into a Federal tribunal, then we are safe; but, if this is an axiom with exceptions, and our case is one of the exceptions, we are confronted with serious complications. Now, if it should be held that the Court had jurisdiction to grant the relief prayed for in our bill, then I have no fear of this Court reversing the final decree on the law or facts as found by the Court below. I call the attention of the Court to the opinion of Judge Hill, on which the final decree was based, and submit that an examination of the testimony will show that his finding of the facts was in accordance with the testimony. (See Record p. 148).

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closes the fact that there were some four or five thousand dollars in money taken out of the firm assets just previous to the making of the assignment and was in the hands of the assignors at the time of the assignment and was never intended by them to go into the hands of the assignees. Every fact found as before suggested in Judge Hill's opinion is amply warranted by the testimony in the case.

Whatever the law may be elsewhere, these facts render a voluntary assignment void under the law of the State of Mississippi, as has been frequently held by the Supreme Court of that State. Our Court holds that an assignee for creditors is not a bona fide purchaser for a valuable consideration.

Rothenberg vs Bradley 10 Southern Rep 921

Paine, Assignee *vs.* Aberdeen Hotel Co., 60 Miss., 362.
Craft *vs.* Bloom, 59 Miss., 76.
Surget *vs.* Boyd, 57 Miss., 485.

Scott vs Vandegrift 10 Southern Reporter 486

Our Court holds that any fraud on the part of the assignors will vitiate the assignment, it matters not how innocent the assignees or the preferred creditors may be. For instance, if an assignor makes an assignment by which he claims to transfer all of his assets exempt from execution to an assignee for the payment of his debts, and at the time he makes the assignment, has money or other property that he has secreted or concealed, and does not intend it shall go into the hands of the assignee, this is a fraudulent assignment, and is so held by our Court, notwithstanding the assignee might afterwards get posession of the money or the property so withheld. It requires the good faith of the assignor to breathe life and vitality into an assignment in Mississippi, I am aware that this is not the law in all of the States, and that it would not be enforced as the law in this Court except in cases arising in States where it was the law. Counsel can cite the decision of several States where this is not the law. He can cite the decision of this Court in cases arising in the States where the law is different from what it is held to be in Mississippi. The case of Emerson *vs.* Senter, 118 U. S., a case

where this Court held that the bad faith of the assignor not participated in by the assignee or beneficiaries would not vitiate the assignment. That decision was based upon the fact that that was the law in Arkansas, in which the case arose. The case of Estes *vs.* Gunter, 122 U. S. reports, referred to by counsel is a very different case from the one now under consideration. In that case if there were frauds committed by the assignor they were before the assignment, and had no connection with it.

The distinction between that case and the case under consideration is: In that case there is no bad faith shown in the making of the assignment. In the case under consideration, no one can read the testimony and can see how the assignors in this case could have helped knowing that they had money that they did not intend should go into the hands of the assignees, although they were claiming to assign all their property not exempt. Counsel for appellants are very much mistaken when they contend that under the laws of Mississippi, that govern in this case, that in order to vitiate an assignment there must be some defect in the assassignment itself. The written paper or assignment may be such in legal effect as to accomplish the purpose for which it is claimed to be made; yet if there is a secret motive or scheme in the mind of the maker or makers, inconsistent with the good faith of the transaction at the time it is made, this, in Mississippi, voids the assignment.

Counsel for appellants refer to a number of cases decided by the Supreme Court of Mississippi to the effect that a creditor in good faith accepting security for valid subsisting debts will not be effected by the fraud or fraudulent intent of the debtor offering the security. In every one of those cases was a case where the creditor has parted with some consideration for the new security, and just the reverse is the universal rule in Mississippi, where no new consideration has moved from the creditor to the debtor. I now come to the consideration of the question as to what should be done with this case in the event the Court should hold that

the Circuit Court of the United States did not have power to administer the relief prayed for in the bill.

I cannot believe this Court will visit on the appellees the penalty that appellants insist should be imposed, as the result of appellees mistaking their right to have this equitable relief conferred by the Statutes of Mississippi administered on removal to the Federal Court. We are entitled in my judgment to have our rights under the State Statute of Mississippi adjudicated in the United States Court, or to go back to the State Court, where there is no dispute about the jurisdiction, and have them adjudicated there.

It is insisted by counsel for appellants that we abandoned the State Court on our own motion ; that we were presumed to know the jurisdictional limits and the methods of procedure in the Federal Court, and to use their classical language, " We have made our bed and must lie on it."

I am constrained to feel that no such harsh rule should be applied to us in this case. How could we be presumed to know the jurisdictional limitations and methods of procedure of the Federal Courts when the Federal Courts did not know it themselves?

We were pursuing what was the regularly established practice of the Federal Court at the time we did it. It was a practice that had gone on for years and the exercise of a jurisdiction that, so far as I know, had never been questioned. The case of Scott *vs.* Neely had not then been decided. We had grown up to believe in the statement in *ex parte* McNeil, that it was "an axiomatic principle in our national jurisprudence that a party forfeits nothing by going into a Federal Tribunal." If this bill had been filed in the Federal Court we know what the result would be from the order of this Court in Scott *vs.* Neely. It would be dismissed without prejudice, leaving the party to pursue whatever meritorious remedy they had.

Now with a perfectly meritorious case, are we to be deprived of all remedy, because we have been led by the common practice of the Federal Court into the mistake of going

there to secure our rights? Counsel for appellant insists that we cannot experiment with the Courts. We did not think we were experimenting. As I have before said, this class of cases had not only been entertained and disposed of in the Circuit Court, but they had been brought to this Court, and had gone through here without question. Now, I appeal to the Court; should our clients be made the victims of a harsh ruling for a mistake made under circumstances like these? This property was in the custody of the State Court under a proper proceeding; was taken out of the custody of the State Court by the Federal Court and finally converted into money and paid over to complainants under the final decree of the District Court.

If the case is to be reversed, I submit it should be remanded to the Court having jurisdiction to dispose of the case made by the bill and answer, and the money should be paid into the State Court to abide the result of its final decree.

Johnson Allen
Solr for appellees